
(2006) 05 GAU CK 0100

In the Gauhati High Court

Case No : Writ Petition (C) No's. 5846 of 1999, 1134 and 6969 of 2000, 7605 of 2001, 3151, 4243 and 5435 of 2002, 5391, 6561, 6585, 8142 and 8867 of 2004 and 2815, 4640, 5135, 6230 and 7137 of 2005

Santi Ranjan Dey and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2009) 1 GLR 507 : (2006) 4 GLT 716

Hon'ble Judges : Aftab H. Saikia, J

Bench : Single Bench

Advocate : B. Banerjee, S.C. Biswas, K. Mazumdar, S.R. Bhattacharjee, H.A. Saikia, J. Chutia, B. Goyal, K. Raju, A.K. Sarkar, D.P. Mandal, G.P. Bhowmik, S. Roy, J. Purkayastha, A.S. Choudhury, R. Majumdar, J. Hussain, R. Ali, M.U. Mondal, M.H. Barbhuyan, A.K. Goswami, A.K. Sarmah, N. Choudhury, S.K. Ghosh, I. Hussain, A. Maleque, N.N. Ahmed, P. Sarma, S.K. Singha, B. Kumar and R. Das, for the Appellant; K.N. Choudhury and K.C. Mahanta, for the Respondent

Judgement

Aftab H. Saikia, J.—Heard the learned Counsel representing the contesting parties.

2. Heard Mr. K.N. Choudhury, learned Addl. Advocate General, Assam whose assistance has been sought for by this Court considering the importance and seriousness of the issue raised in this batch of writ petitions that pertains to impact of striking off the Illegal Migrants (Determination by Tribunals) Act, (39 of 1983) ("the Act") as being ultra vires by the Supreme Court in a case of Sarbananda Sonowal Vs. Union of India (UOI) and Another, upon the pending cases before this Court preferred against the appellate orders passed by the Illegal Migrants Appellate Tribunals ("the Appellate Tribunals") constituted under the Act.

3. In this host of writ petitions preferred under Article 226 of the Constitution,

most of the orders passed by the Appellate Tribunals have been assailed on the ground of violation of the principles of natural justice. Some are against non-consideration of the relevant documents and/or non-appreciation of material evidence on record. Few are against the rejection of condonation applications in preferring the belated appeals before the Appellate Tribunals.

4. During the pendency of these writ petitions before this Court, the Apex Court in *Sarbanda Sonowal's* case (*supra*) struck down the provisions of the Act as being ultra vires and in paragraphs 57 and 58 therein it was held as follows:

57. To sum up our conclusions, the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 are ultra vires the Constitution of India and are accordingly struck down. The Illegal Migrants (Determination by Tribunals) Rules, 1984 are also ultra vires and are struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease of function. The Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967 shall apply to the State of Assam. All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964. In view of the finding that the competent authority and the Screening Committee had no authority or jurisdiction to reject any proceedings initiated against any alleged illegal migrant, the orders of rejection passed by such authorities are declared to be void and non est in the eye of law. It will be open to the authorities of the Central Government or State Government to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever. The appeals pending before the Appellate Tribunals shall be deemed to have abated.

58. In view of the discussion made above, the writ petition succeeds and is allowed with the following directions:

(1) The provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 are declared to be ultra vires the Constitution of India and are struck down;

(2) The Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function;

(3) All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the

procedure prescribed under the Foreigners (Tribunals) Order, 1964.

(4) It will be open to the authorities to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.

(5) All appeals pending before the Appellate Tribunal shall be deemed to have abated.

(6) The Respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of Foreigners who have illegally come from Bangladesh, or are illegally residing in Assam.

5. In view of the above judicial authority, all the cases pending before the Tribunals under the Act, stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 ("the Order") and shall be decided in the manner prescribed and provided in the Foreigners Act, 1946 ("the Foreigners Act"), the Rules made thereunder and the procedure prescribed under the Order and all appeals pending before the Appellate Tribunals shall be deemed to have abated.

6. However, no order as such has been passed as regards the cases pending before the High Courts carried from the Appellate Tribunals.

7. Now the precise question is how to deal with these writ petitions without the existence of the Act itself. Mr. Choudhury, learned Addl. Advocate General Assam has fairly submitted that it would be in the interest of justice that all the cases pending before this Court may be transferred to the Foreigners Tribunals for fresh hearing because according to him, this procedure would allow the writ Petitioners to get a reasonable opportunity to defend their respective cases through a trial afresh on striking off the Act by the Supreme Court. Reason for this argument is that, if the Appellate Tribunal's order under challenge is upheld by this Court, the person concerned shall have no option subject to interference by the Highest Court but only is to be deported under the Act when the same itself is not in force and hence such act will be highly prejudicial to him infringing the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India which are promised not only to a citizen but also a non-citizen. On the other hand, if the appellate judgment and order is set aside and remanded, the Petitioner/Petitioners shall be devoid of any legal forum due to abatement of the Appellate Tribunals.

8. Since on close perusal of the impugned orders of the Appellate Tribunals in this bunch of writ petitions, it appears that almost in all the cases, there is an allegation of violation of principles of Natural Justice calling for a fresh trial by affording reasonable opportunity of hearing to the parties and having regard to the decision of this Court rendered in a case of Sri Kamal Debnath and Ors. v.

Member, Foreigners Tribunal, Guwahati and Ors. 1996 (3) GLT 350, wherein this Court has held that when Clause (3)(1) of the Foreigners (Tribunal) Order, 1964 prescribes the procedure to be followed by the Tribunal in disposal of question referred to it, a reasonable opportunity of hearing including production of evidence in support of his or her case is contemplated by the procedure prescribed, this Court is of the opinion that there is substantial force in the submission advanced by the learned Additional Advocate General and the same deserves approval. Consequently, the same is accepted.

9. Upon hearing the learned Counsel for all the parties and also having carefully considered the facts and circumstances of each case in its entirety, in the interest of justice, all these writ petitions stand remanded to the Foreigners Tribunal for their disposal by fresh trial following the procedure established under the law in force in terms of the above Apex Court's decision.

10. The Petitioners so represented by their respective learned Counsel shall appear before the concerned Foreigners Tribunals having competent jurisdiction under the respective districts to which the Petitioner(s) belongs/belong within 17.7.206 and the competent Tribunals, on their such appearance on the date indicated above, shall issue notices to the interested parties including the State Officials and thereafter shall make an endeavour to decide the cases in the manner prescribed in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Order.

11. In view of what has been discussed, observed and indicated, all these writ petitions stand disposed of.

12. Interim order/orders passed in those cases shall continue till such disposal.