

(2014) 01 GAU CK 0007
In the Gauhati High Court
Case No : W.P. (C) No. 7036 of 2005

Shah Mohammed Anowar Ali and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Citizenship Act, 1955 — Section 5, 5(1)(a), 6, 9(1), 9(2)
Constitution of India, 1950 — Article 11, 227, 355, 5, 6
Criminal Procedure Code, 1973 (CrPC) — Section 482
Foreigners Act, 1946 — Section 14, 2(a)
Foreigners Order, 1948 — Section 14

Citation : (2014) 1 GLD 499 : (2014) 2 GLT 299

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.B. Choudhury, Mr. H. Hoque, Mr. S.K. Sarkar and Mrs. S.A. Choudhury, Advocate for the Appellant; D. Saikia, Addl. A.G., Mr. M. Bhagawati, CGC and Mr. P. Naik, Advocate for the Respondent

Judgement

Biplab Kumar Sharma, J.—As the case would reveal, with the narration of the facts below, the following is the state of affairs in the State of Assam on the issue of illegal Bangladeshi migrants, whose presence in the State, in huge numbers, with inclusion of their names in the voter list, is a well known fact.

(i) Bangladeshi nationals can easily enter into Assam mostly without any valid documents and stay back enjoying all the rights, including voting rights of Indian citizens.

(ii) Even if the illegal Bangladeshi migrants are identified to be so by the Foreigners Tribunals established only in the State of Assam after the judgment of the Apex Court in Sarbananda Sonowal Vs. Union of India (UOI) and Another, , followed by Sarbananda Sonowal Vs. Union of India (UOI), , they can easily do the act of vanishing and the State administration remains clueless. Their names are also not deleted from the Voter Lists without direction of the Court.

(iii) In most of the cases, where the opinions of the Foreigners Tribunals are upheld by this Court, the report furnished by the police administration is to the effect that their whereabouts are not known and that efforts are being made to trace them out, but such tracing out is absolutely negligible.

(iv) Above being the position, no useful purpose has been served by establishing the Foreigners Tribunals as per the direction of the Apex Court in the above mentioned cases except the paper works. Even the consequential action of deleting the names of such declared foreigners from the voter list is not taken up except in those cases, where this Court interferes.

(v) Such illegal Bangladeshi migrants can have the luxury of maintaining family members both in Bangladesh and in Assam with easy passage to and fro.

(vi) In the writ petitions filed challenging the orders of the Foreigners Tribunals, both the Union of India and the State Government are non-responsive as if they do not have to say anything in such matters.

In other words, they are least bothered about the outcome of such proceedings although the matters require their wholesome response.

(vii) If the above position continues, there is no manner of doubt that the indigenous people of Assam will be reduced to minority in near future, if not already reduced.

FACTS OF THE CASE:-

The two writ petitioners, who are husband and wife, have claimed in the writ petition that they are originally citizens of India, meaning thereby that, presently they are not. According to the petitioners, the father of the petitioner No. 1, Akbar Ali, was born in undivided India, and the petitioner No. 1 was born in Guwahati (Lakhtokia) and had his education also in Guwahati. As claimed in the writ petition, the mother of the petitioner No. 1, Jamila Khatoon, was also born in undivided India and she came to Guwahati in the year 1981. Further narrating the case of the petitioners, it has been stated in the writ petition that the petitioners got married in the year 1986, at Guwahati, and since then they have been residing at Guwahati. Out of the said wedlock, four children were born. As has been claimed in the writ petition, out of the said four children, three were studying in different schools in Guwahati and the fourth child was only two years old. Be it stated here that the writ petition was filed on 05.10.2005.

2. The father of the petitioner No. 1 is a Bangladeshi citizen and has his permanent settlement in Silhet District of Bangladesh. The petitioners, along with their first child, went to Bangladesh in September, 1991, admittedly without passage documents.

3. When the petitioners went to Bangladesh in September, 1991, the petitioner No. 2 was at an advance stage of pregnancy of the second issue and, during their stay in Bangladesh, she gave birth to her second issue on 30.12.1991, in

Bangladesh. They came back to Assam in March, 1992, with their two children, obviously without any transit documents.

4. The petitioners again went to Bangladesh, this time also without any passage documents, in November, 1996, to see the ailing father of the petitioner No. 1. According to the petitioners, the father of the petitioner No. 1 fell ill and as such they could not return to India early, but could return only on 10.05.1997, with the passports of Bangladesh Republic. It has been stated in the writ petition that they had to obtain the passports under compelling circumstances as they were not allowed to cross the border between Bangladesh and India.

5. After coming to Assam with the said Bangladesh Republic passports through the check-post of Karimganj border, they stayed at Nagaon and, thereafter, shifted to Panbazar, Guwahati. In paragraph 9 of the writ petition, the petitioners have stated that they filed applications from time to time seeking extension of the period of their visas. Although their applications for extension of the period of their visas were forwarded, no action was taken by the Assam Government. In such circumstances, the petitioners understood that their visas were extended as had been prayed for.

6. Further story narrated in the writ petition is that while staying at Guwahati beyond the validity period of the visas, the writ petitioner No. 2 fell seriously ill and had to be hospitalized. The petitioner No. 1 too was attacked by viral hepatitis and became bedridden. In such circumstances, the petitioner No. 1 submitted an application, on 21.03.1998, to the Additional Deputy Commissioner, Nagaon praying for extension of visa period for another two months. The application was duly forwarded to the concerned department of the Government of Assam and the petitioners were expecting extension of the visa period enabling them to stay in Guwahati.

7. According to the petitioners, as their prayer for extension of the visa period was under examination, they were under the impression that their prayer would be considered. However, they were arrested along with their two minor children in connection with Panbazar Police Station Case No. 213/98 (GR Case No. 2649/98), registered u/s 14 of the Foreigners Act on the ground that the petitioners' applications for extension of stay in India was rejected by the Government of Assam. The petitioners have claimed that they were never informed by the authority about the rejection of their prayer for extension of visa period. After their arrest, the petitioners were granted bail by the learned Chief Judicial Magistrate, Kamrup, Guwahati, on 04.07.1998.

8. If we go by the aforesaid facts, there is absolutely no manner of doubt that the petitioners are Bangladeshi citizens and entered Assam with the passports of Bangladesh Republic. It is only after the rejection of their prayer for extension of visa period and registration of the aforesaid criminal case, the petitioners filed an application, on 31.08.1998, before the Collector, Kamrup, Guwahati for being registered as Indian citizens u/s 5(1)(a) of the Citizenship Act 1955. As claimed

in paragraph 14 of the writ petition, a copy of the said application was also submitted to the Government of India, in the Ministry of Home Affairs, on 27.09.1999, i.e., after more than one year of submitting the application before the Collector. In paragraph 16 of the writ petition, the petitioners have claimed that several reminders were also sent to the Collector for doing the needful towards registering them as Indian citizens. However, no action was taken on the basis of the said applications.

9. In the meantime, the petitioners were summoned to appear before the learned Additional Chief Judicial Magistrate, Guwahati, in connection with the aforesaid GR Case No. 2649/98. Upon appearance and further proceeding, the learned Magistrate, by order dated 13.06.2000, framed charge against both the petitioners u/s 14 of the Foreigners Act. Although the petitioners submitted application for stay of the proceeding, but the learned Chief Judicial Magistrate rejected the same vide order dated 03.04.2001, which the petitioners have described as illegal. Against the said order of rejection, the petitioners had approached this Court by filing an application u/s 482 of the Code of Criminal Procedure, read with Article 227 of the Constitution of India, for quashing the criminal proceeding launched against them. The said application was registered and numbered as Criminal Revision Petition No. 507/2001. The said application was rejected by this Court vide order dated 02.09.2005 directing the two petitioners to appear before the Court below on 05.10.2005.

10. "With the aforesaid narration of facts, the petitioners" plea in the writ petition is that on the one hand they would be prosecuted in GR Case No. 2649/98, but on the other hand, their applications for registration as Indian citizens are still pending before the authority. In paragraph 22 of the writ petition, the petitioners have categorically stated that their prayer for extension of the visa ought to have been considered enabling the petitioner to leave India, but the respondents, in a most callous and irresponsible manner, did not consider the same and the decision to reject the prayer was also not communicated to them.

11. Referring to the provisions of the Citizenship Act 1955, it is the claim of the petitioners that they would be deemed to be Indian citizens. Their entry into India with Bangladesh passport is not enough to come to a conclusion that they are Bangladeshi nationals.

12. It is on the basis of the aforesaid facts narrated in the writ petition, the petitioners" prayer in the writ petition is to direct the respondents to consider their applications for Indian citizenship u/s 5(1)(a) of the Citizenship Act 1955. With the prayer for an interim direction not to deport them from India, the writ petition was filed on 05.10.2005 and by order dated 16.11.2005, while admitting the writ petition, an order was passed in the writ petition not to deport the petitioners from India.

THE WRIT PROCEEDING:--

13. Although the writ petition was filed on 05.10.2005 and the interim order was passed on 16.11.2005, but till the writ petition was entertained again on 12.06.2013 by this Court it was never listed for hearing, except once, on 27.09.2007, on which date the learned counsel for the petitioners prayed for two weeks" time, which was granted. Thus, from 16.11.2005 to 12.06.2013 the writ petition was lying unlisted except once on 27.09.2007. It is not understood as to why the Registry of this Court did not list the matter for such a long time. Considering the issue involved and the state of affairs in the State of Assam on the issues highlighted in the beginning of this judgment, the reason is perhaps obvious for which the Registry owes an explanation, which is being dealt with separately.

14. When the matter was listed on 12.06.2013, this Court, noticing the seriousness of the matter and narrating the entire facts of the case, directed the respondents to make their position clear in the matter inasmuch as till then the writ petition was not responded to by both the union and the State Government. It is only because of the time to time monitoring of the case, thereafter, the respondents have filed their counter-affidavits, but for which they would not have responded to this proceeding and the writ petition would have proceeded only with the aforesaid plea of the writ petitioners.

15. When the matter was entertained on 12.06.2013; the non-responsive attitude of the respondents was highlighted. Queries were made as to whether the petitioners, in the meantime, have enrolled their names in the voter list. After filing of the affidavits, it came to the notice of the Court that their names appeared in the voter list of 2013. Thus, here is a case in which the petitioners, in spite of being Bangladeshi nationals and against whom a criminal case is pending for violation of the provisions of the Passport Act, have easily got their names recorded in the voter list. Thus, there is no sanctity of the voter list which can incorporate only the names of the India citizens, but in Assam such inclusion of the names of the illegal Bangladeshi migrants in voter lists is rampant and is of no concern for the Union and the State Government for obvious reasons.

ARGUMENTS

16. As stated above, there was no response to this proceeding from the State Government and the Union Government for long eight years. It was only because of the intervention of this Court, vide order dated 12.06.2013, the said two governments have shown their response by filing affidavits. However, there was no appearance in the proceeding, on behalf of the State Government till the matter was again taken up on 04.09.2013 and it was only on the request of this Court that Mr. D. Saikia, learned Additional Advocate General, Assam, entered appearance in the proceeding on behalf of the Government of Assam.

17. Mr. A.B. Choudhury, learned Senior counsel, assisted by Mr. M. K. Sharma, learned counsel for the petitioners; referring to the provisions of the Citizenship Act and the rules framed there under, submitted that the petitioners, being

originally citizens of India, are required to be declared as Indian citizens. Referring to the following decisions, he also submitted that the law, in this regard, supports the case of the petitioners. The decisions referred to by the learned counsel for the petitioners are as follows:

- (i) Mohd. Ayub Khan Vs. Commissioner of Police, Madras and Another, ,
- (ii) State of U.P. Vs. Rehmatullah, ,
- (iii) National Human Rights Commission Vs. State of Arunachal Pradesh and Another, ,
- (iv) State of M.P. v. Chintaman Sadashiva, reported in AIR 1961 SC 1623.

18. Countering the above arguments, Mr. D. Saikia, learned Additional Advocate General, assisted by Mr. R Naik, submitted that the petitioners having accepted the citizenship of Bangladesh, which is an admitted fact, cannot claim Indian citizenship on the basis of the pleas raised in the writ petition. As regards the criminal case pending against the petitioners, which is under order of stay of the learned Court below vide order dated 30.05.2007. Mr. Saikia, learned Additional Advocate General submitted that the matter should not be kept pending any more in view of the above admitted facts and appropriate direction should be issued for deportation of the petitioners from India along with their children. As regards the decisions cited by the learned counsel for the petitioners, he submitted that they are misplaced and not applicable to the case in hand.

19. Mr. M. Bhagawati, learned Central Government counsel, supporting the arguments advanced by Mr. D. Saikia, learned Additional Advocate General, Assam, submitted that the petitioners are not entitled to claim Indian citizenship by registration as the provisions, cited by them, are not applicable to their case.

FINDINGS

20. No amount of arguments advanced by the learned counsel for the petitioners can persuade this Court to take a view that the petitioners are entitled to get Indian citizenship by operation of the provisions of the Citizenship Act and the rules framed thereunder in view of the fact that they had come to Assam as Bangladeshi citizens with the passports of Bangladesh Republic. With the intention to go back to Bangladesh, they also prayed for extension of their visa period. It was only after rejection of their prayer, they made applications seeking registration of their names as Indian citizens u/s 5(1)(a) of the Citizenship Act

21. During the pendency of this proceeding as well as the criminal proceeding referred to above, the petitioners could get their names entered in the voter list with suppression of material fact on which ground alone they are not entitled to get their writ petition entertained with their frivolous plea. Irrespective of this position, the case has been considered on merit

22. According to the petitioners, they are entitled to get their names registered as Indian citizen u/s 5(1)(a) of the Citizenship Act, 1955. The said provision

reads as follows:

5. Citizenship by registration -

(1) Subject to the provisions of this section and such other conditions and restrictions as may be prescribed, the Central Government may, on an application made in this behalf, register as a citizen of India any person not being an illegal migrant who is not already such citizen by virtue of the Constitution or any other provision of this Act if he belongs to any of the following categories, namely -

(a) a person of Indian origin who are ordinarily resident in India for seven years before making an application for registration;

23. From the above provision of Section 5(1)(a) what is seen is that an application for registration as a citizen of India is to be entertained subject to the other provisions of Section 5 in respect of a person not being a illegal migrant, who is ordinarily resident in India for seven years before making an application for registration. The other provisions of Section 5 are as follows:

5(1)(a) ***

(b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;

(c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;

(d) minor children of persons who are citizens of India;

(e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of Section 6;

(f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;

(g) a person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for one year before making an application for registration.

Explanation.--For the purposes of clauses (a) and (c), an applicant shall be deemed to be ordinarily resident in India if-

(i) he has resided in India throughout the period of twelve months immediately before making an application for registration; and

(ii) he has resided in India during the eight years immediately preceding the said period of twelve months for a period of not less than six years.

Explanation 2.--For the purposes of this subsection, a person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India or

in such other territory which became part of India after the 15th day of August, 1947.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

(6) If the Central Government is satisfied that circumstances exist which render it necessary to grant exemption from the residential requirement under clause (c) of sub-section (1) to any person or a class of persons, it may, for reasons to be recorded in writing, grant such exemption.

24. As per the aforesaid provisions, an application can be made for registration as a citizen of India by a person, who fulfils the conditions referred to above. As per the explanation provided to the conditions for the purpose of Clause (a), a person will have to be a resident in India throughout the period of 12 (twelve) months immediately before making the application for registration and such a person will also have to be a resident in India during the 8 (eight) years, immediately preceding the said period of 12 (twelve) months, for a period not less than 6 (six) years. None of these conditions have been fulfilled by the petitioners and, thus, apart from their conduct disentitling them to Indian citizenship, their applications for registration are also of no significance as they do not fulfill the required conditions laid down u/s 5 of the Citizenship Act, 1955.

25. Although the respondents, both State and the Union Government, did not file any counter-affidavit for long 8 (eight) years, but, eventually they had to file the same as per directions of this Court referred to above. In the counter-affidavit filed by the State Government in the Home and Political Department, it has been stated that both the petitioners have admitted violation of the provisions of the Indian Passport Act and the rules framed thereunder. The petitioners went to Bangladesh from India in the month of September, 1991, with their first child, without any permission/passport etc. from the concerned authority of India. They easily came back to Assam in March, 1992, and again went to Bangladesh in

November, 1996 and, on that occasion also without any prior permission/passport from the concerned author-

26. As revealed in the said affidavit the petitioners entered India (Assam) on 11.05.1997, with the visa for 10(ten) days and prayed to the Deputy Commissioner, Nagaon for extension of the same for a period of one month on medical ground. They were granted extension of visa for one month vide W.T. Message dated 11.07.97 w.e.f. 11.06.1997 to 11.07.1997. This aspect of the matter has not been disclosed in the writ petition and thus, there is suppression of material fact Be that as it may, later on, they made a further application seeking extension of visa for another two months w.e.f. 05.07.1997 to 04.09.1997. Their prayer was granted up to 21.08.1997 vide order dated 05.09.1997. This aspect of the matter has also not been disclosed in the writ petition. The petitioners again requested for further extension of visa for their stay in India, vide application dated 27.11.1997. but the prayer so made was rejected vide order dated 07.01.1998 as the writ petitioners had already completed the maximum period of their stay i.e., 3 (months) in India.

27. As stated in the said affidavit, in spite of repeated instructions to them to leave India, they stayed back illegally in Assam in the house of one Nipon Dewan of Col. J. Ali Road, Lakhtokia, Guwahati-781001. The affidavit further states that vide order dated 03.06.1998, the Superintendent of Police (City), Guwahati, was clearly instructed to take necessary steps to deport the petitioners. However, it appears that no steps have been taken in this regard. In the meantime, the aforesaid criminal case was registered against the petitioners. As regards the inclusion of the names of the petitioners in the voter list it has been stated in the affidavit that their names were included in the voter list of 2013.

28. In the counter-affidavit filed by the Senior Superintendent of Police, Guwahati (i.e., respondent No. 4), the facts relating to registration of the criminal case against the petitioners, u/s 14 of the Foreigners Act, have been highlighted in the counter-affidavit filed by the Union Government (i.e., respondent No. 2), it has been stated that u/s 9(1) of the Indian Citizenship Act, 1955, the petitioners are not entitled to get Indian citizenship as they as they have, by nationalization/registration or otherwise voluntarily acquired the citizenship of another country, i.e., Bangladesh.

29. In the affidavit-in-reply filed by the petitioners, while reiterating the statements made in the writ petition, it has been stated that since the petitioners had made application to the Collector, Kamrup, for granting Indian citizenship, it was the duty of the Collector to forward the same to the Central Government for a decision in the matter.

THE STAND OF THE GOVERNMENT OF ASSAM IN THE ELECTION DEPARTMENT IN THEIR AFFIDAVIT FILED ON 03.10.2013:

30. When a query was made as to how the names of the petitioners could find place in the voter list during the pendency of the instant proceeding and also the

criminal proceeding referred to above, the reply furnished by the Government is very interesting. Referring to the order passed by this Court on 04.09.2013, by which the Election Department was required to furnish explanation as to how the names of the petitioners could be included in the Electoral Rolls of 2013 and also as to whether their names should be retained in the said roll, it has been stated thus:

3. In respect to the explanation as sought for as to how the names of the petitioners was included in the Electoral Rolls of 2013, it is stated that the Electoral Rolls of 2013 was prepared on the basis of the Electoral Rolls of 2005 which was prepared after intensive revision through house to house enumeration. It is stated that at the time of the house to house enumeration, the head of the household has to give declaration for himself and for other members of the household if those persons are citizens of India. It may be mentioned that during summary revision also if a person wants to enroll himself as elector, he has to fill up the particulars in Form-6 which includes the declaration as to his/her being an Indian citizen. The said declaration is taken at the face value except if the Electoral Registration Officer has any doubt about the declaration on account of any information in his possession, he may refer it to the police for citizenship verification. It is believed that on the basis of declaration made by the Petitioners their names got entered in the Draft Electoral Rolls of 2005 at Serial No. 252 and 253 respectively. House No. 38(Ka). Part-69 of 53 East Guwahati L.A. Constituency. The said Draft Electoral Rolls to the intensive revision of Electoral Rolls were published on-14.02.2005 in terms with Rule 10 of the Registration of Electors Rules, 1960 and in terms with Rule 12 of the said Rules, claims and objections for inclusion and deletion of names in the Electoral Rolls were called. However, in respect to the petitioners no objection came from any quarter against their names enrolment in the Draft Electoral Rolls. It is under such circumstances, the names of the petitioners appeared in the Final Electoral Rolls in the year 2005 which was published on 31.08.2005. The deponent craves leave of this Hon''ble Court to produce the Model Form of Enumeration Pad, the Form-6 as well as the Final Electoral Rolls of 2005 wherein the names of the petitioners were shown at Serial No. 252 and 253 and their House No. has been mentioned as House No. 38(Ka).

4. Subsequent thereto, in the Electoral Rolls of the subsequent years, including that of 2013, the names of the petitioners were included. There was no objection on their enrolment as electors from any quarter filed to the Electoral Registration Officer/District Election Officer in the intervening years either in the Electoral Roll revision period or otherwise.

(Emphasis supplied)

31. From the above stand of the Govt. of Assam, in the Election Department, there is absolutely no manner of doubt that one can easily enter his name in the Electoral Roll of Assam and the declarations made by the person concerned to include his name in the voter list are taken on their face value. If this is the

situation in respect of the Electoral Rolls of Guwahati it can easily be imagined as to what is the condition prevalent in other State constituencies flooded with illegal Bangladeshi migrants. Thus, our representatives, both in the Parliament and the Assembly, are also the representatives of illegal Bangladeshi migrants and the said illegal Bangladeshi migrants are instrumental in making the law makers of the country. In other words, they are the king makers. The Election Commission of India must adopt mechanism and procedure to check this phenomenon and also must ensure that not a single name of illegal Bangladeshi migrant remains in the Voter lists.

32. As per Rule 17 of the Citizenship Rules, 1956, on which the learned counsel for the petitioners has emphasized, the Collector is required to forward the application for nationalization and resumption of Indian citizenship to the Central Government. This exercise is only on fulfillment of the above-referred provisions of Section 5 of the Citizenship Act, 1955. Otherwise, every illegal Bangladeshi migrant can make application for acquiring Indian citizenship, which cannot be said to be the intent and purpose of the Citizenship law.

33. Article 11 of the Constitution of India empowers the Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. It is under the said provision that the Citizenship Act, 1955, was enacted by the Parliament in the 6th year of the Republic of India. Under Article 9 of the Constitution of India, no person shall be a citizen of India by virtue of Article 5, or shall be deemed to be a citizen of India by virtue of Article 6 or Article 8 if he has voluntarily acquired the citizenship of any foreign State. Article 5 makes provision for citizenship at the commencement of the Constitution. Article 6 and 8 confers rights of citizenship of certain persons, who have migrated to India from Pakistan and persons of Indian origin residing outside India respectively. Article 6 provides for the rights of citizenship of all those persons, who have migrated to India from Pakistan. Article 8 provides for the rights of Indian citizenship only to those persons, who were ordinarily residing in any country outside India. None of these provisions is applicable to the case of the petitioners.

34. The petitioners voluntarily but stealthily entering into Bangladesh and, thereafter, again entering into Assam and, thereafter, again visiting Bangladesh in the same manner, have made it abundantly clear that there is absolutely no barrier worth the name, which can prevent infiltration from across the border. One can easily come to Assam from Bangladesh. Those who have already entered into Assam, are illegally staying with all the rights of Indian citizens, including voting rights.

35. The petitioners could maintain their establishments both in Assam and Bangladesh. For them, going to Bangladesh from Assam and, then, coming back to Assam without any document was an easy task as in the case of a large number of illegal migrants from Bangladesh. Had they not applied for extension of visa, their case would have gone unnoticed and they could have stayed back

with all the rights of Indian citizens including voting rights. Further, had this Court not taken up the matter as referred to above, there would not have been any response from Union and State Govt. In fact, the petitioners have been enjoying all rights of Indian citizen including voting rights in spite of pendency of the instant proceeding and the aforementioned criminal proceeding and the plea taken by the State Government is that one can enter his name in the voter list and the particulars furnished are taken on their face value.

36. From the above, what is discernible is that there is no responsibility of the State Government to verify as to whether the application for incorporation of name in the voter list discloses the real facts or not. With the kind of plea taken by the State Government in the Election Department, anybody can enter his name in the voter list. This is a dangerous trend to the likings of those, who are not at all concerned with the fate of the indigenous people of Assam and are only concerned with their own obvious interest.

37. The decisions on which the learned counsel for the petitioners has placed reliance are of no help to the case of the petitioners as will be evident from the reference to the said cases. In *Chintaman Sadashiva* (supra), the Apex Court was concerned with the principles of natural justice. It was held that no material should be relied upon against the person concerned without his being given an opportunity of explaining them. This case has been relied upon to emphasis on the point that before rejecting the prayer for extension of the visa period, the petitioners ought to have been given an opportunity of being heard. This case is simply misplaced and has no application to the instant case. The petitioners having had come to India from Bangladesh as Bangladeshi nationals with passport of Bangladesh Republic and having applied for extension of visa enabling them to go back to Bangladesh, cannot claim that the rejection of prayer for further extension of visa period is violative of the principles of natural justice.

38. In *Md. Ayub Khan* (supra), the court was concerned with termination of citizenship of an Indian citizen. It was held that the citizen concerned must be given due notice before such termination and reasonable opportunity of being heard to convince the authority that what is alleged against him is not true. In the given facts and circumstances, it was also held that obtaining a passport of a foreign country cannot in all cases merely mean receiving the passport. If a plea is raised by the citizen that he had not voluntarily obtained the passport, the citizen must be afforded an opportunity to prove that fact. Same is not the case in hand. The petitioners having obtained the passport of Bangladesh republic as Bangladeshi nationals and there after coming to India also having applied for extension of the visa period with the intention to go back to Bangladesh cannot take the plea that they had obtained the passport of Bangladesh republic not voluntarily.

39. In *Rahmatulla* (supra), in the given facts and circumstances, (the matter pertained to 1955) it was held that the Central Government was to take a

decision in the matter to determine as to whether the respondent having acquired Pakistani nationality had thereby lost Indian nationality could have been treated as a foreigner. In the said case, the Apex Court was concerned with the determination of the status of the respondent entering into India on 1.4.1955 in reference to the definition of "Foreigner" u/s 2(a) of the Foreigners Act, 1946. Needless to say that the ratio of any decision must be understood in the background of the fact of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it. See-Lord Halsbury in *Quinn v. Leathern*, 1901 AC 495 - referred to in *Ambica Quarry Works Vs. State of Gujarat and Others*, .

40. In *National Human Rights Commission (supra)* dealing with the case of Chakma refugees migrated from the then East Pakistan (now Bangladesh) in 1964 and having noticed that they had settled in the particular area in the State of Arunachal Pradesh since last about 2 1/2 decades, it was held that the State is bound to protect the life and liberty of every human being, be he a citizen or otherwise. It will be pertinent to mention here that the said refugees were threatened by a particular organization to leave the State under threat of forcing them to do so upon failure. This case has been relied upon to emphasize that the Collector ought to have been forwarded the application submitted by the petitioners for registering themselves as Indian citizens to the Central Government. However, as noted above, the petitioners having not fulfilled the pre-requisites or the conditions precedents, they are not entitled to get themselves registered as Indian citizens. Otherwise, all the illegal Bangladeshi migrants entering into Assam would claim registration as Indian citizens rendering Indian citizenship as per the Constitution and the laws framed thereunder otiose.

41. In *Bhanwaroo Khan and Others Vs. Union of India (UOI) and Others*, , the Apex Court held that the appellants therein having voluntarily migrated to Pakistan and staying there for three years and subsequently after obtaining passports from the Government of Pakistan and visas from Indian High Commission returning to India were not entitled to grant of Indian citizenship.

42. As in the instant case, in the said case also, the appellants had migrated to Pakistan and stayed there for three long years. Subsequently, they came to India as Pakistani nationals/citizens with Pakistani passport. On expiry of visa period, they informed the police of their intended departure for Pakistan. However, instead of departing for Pakistan they went underground. In 1987, they unsuccessfully approached the High Court to seek an order to treat them as Indian citizens. Thereafter they approached the Apex Court and on 16.9.1994, the Apex Court made an order enabling the appellants to make application before the authorities under the citizenship Act, 1955. The said application was rejected u/s 9(2) of the Citizenship Act. Rejecting the appeal preferred by the appellants, the Apex Court held that long stay in the country and enlistment of the voter lists" would not confer any right on any alien to continue to stay in the country. The facts and circumstances involved in the said case are somewhat similar to

the present case.

43. In the instant case, the application purportedly submitted by the petitioners for registering themselves as Indian citizens are only after rejection of their prayer for extension of visa period. As noted above, in paragraph-22 of the writ petition, it is the categorical stand of the petitioners that their visa period ought to have been extended enabling them to leave India within the validity period. Thus as per the own showing of the petitioners, their intention was to go back to Bangladesh, but on the face of their arrest and registration of the aforesaid criminal case, they took recourse to filing application seeking registration as Indian citizens. There is nothing to show that the petitioners had to obtain passport of Bangladesh republic under any compelling circumstances, rather it is their categorical statement in the writ petition as referred to above that had the visa period been extended they would have gone back to Bangladesh within the validity period. This being the position, coupled with their conduct referred to above, the petitioners are not entitled to any relief from this Court.

CONCLUSION:--

44. I have no hesitation to dismiss the writ petition with the aforesaid facts and findings. The State Government in the Home and Political Department and the Senior Superintendent of Police (City), Guwahati, are directed to apprehend the petitioners immediately along with their children and keep them in detention camp till they are deported to the country of their origin, i.e., Bangladesh. The criminal proceeding launched against them will be of no consequence after so many years. The said proceeding, if allowed to continue against the petitioners, will only lead to their presence in Assam till conclusion of the said proceeding. When, admittedly, the petitioners are Bangladeshi nationals, and their plea in the writ petition, in paragraph 22 being that the extension of visa would have enabled them to go back to Bangladesh, there is no point in keeping them in India only to face the said proceeding, instead, they shall be deported to Bangladesh immediately. In terms of the interim order passed by this Court, their names have already been deleted from the voter list. However, it is again directed that the Government of Assam in the Election Department shall ensure deletion of their names from all the voter lists.

45. Before parting with the case record, I place on record the Court's anxiety because of the kind of approach discussed above, on the part of the respondents, more particularly, the State respondents and also the learned Court below in dealing with the matter. At the first instance, their ought not to have been any stay of the criminal proceeding against the petitioners merely because there was an interim order not to deport them from India until conclusion of the present proceeding. The criminal proceeding being independent of the present proceeding, the learned Court below ought not to have stayed the proceeding in respect of the violation of the Passport Act, etc. by the petitioners. Secondly, the respondents, both State Government and the Union Government, ought to have responded to this proceeding. By not responding to this proceeding for long 8

(eight) years, they have depicted their irresponsibility in such a serious issue, which, of course, is true to their approach to the issue as has been noticed by this Court in several such cases.

46. The Apex Court, in the case of Sarbananda Sonowal (1) and (2) (supra), has vividly described the situation that has arisen in the State of Assam because of the unabated and continued influx of illegal Bangladeshi migrants with the following significant observation:

.....there can be no manner of doubt that the State of Assam is racing external aggression and internal disturbance on account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of the Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution.

47. Adding insult to the injury, such illegal Bangladeshi migrants' names are also included in the voter lists, and the Governments, both the State and the Union, only express their helplessness in the matter. If this phenomenon continues, days are numbered, when the State of Assam will go down in the history as a State of indigenous people being swamped by illegal Bangladeshi migrants. This Court has no hesitation to say that had this been the situation in any other country, the same would have been dealt with, with iron hands. However, in Assam, it is not so for obvious reasons, it can only be expected that the authorities empowered to deal with the situation, would rise to the occasion immediately without any wastage of time so that the indigenous people of the State of Assam are saved from the ongoing process of annihilation by the illegal Bangladeshi migrants.

48. The writ petition is dismissed with the aforesaid directions.

49. List after one month for furnishing report by the State Government, Home & Political Department, Election Department and also by the SSP (City), Guwahati, regarding compliance of the directions contained in this judgment. Let copies of this judgment and order be furnished to Mr. P. Naik, learned counsel assisting Mr. D. Saikia, learned Additional Advocate General, Assam, and Mr. M. Bhagawati, learned Central Government counsel. Copy be also sent to the Union Government, in the Home Department, for their appraisal of the State of Affairs in respect of the illegal Bangladeshi migrants in the State of Assam.