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**(2010) 01 GAU CK 0055**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 4903 of 2009**

Shri Uttam Ch. Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 08-01-2010

**Acts Referred:**

Constitution of India, 1950 — Article 19, 20, 21, 22  
Foreigners Act, 1946 — Section 9

**Citation :** (2010) 1 GLD 869

**Hon'ble Judges :** B.K. Sharma, J

**Bench :** Single Bench

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## Judgement

B.K. Sharma, J.—The petitioner who claims to be an Indian citizen by birth has invoked the writ jurisdiction of this Court assailing the legality and validity of the order dated 1.9.2009 passe by the Foreigners" Tribunal, Goalpara in FT case No. 1039/G/06 declaring the petitioner to be an illegal migrant entering into Assam after the cut-off-date 25.3.1971. The impugned order dated 1.9.2009 is ex parte.

2. According to the petitioner he was born at the particular village in the District of Barpeta. However, no date, month or year of birth have been indicated in the writ petition In paragraph 2 of the writ petition, it is the claim of the petitioner that name of his parents, namely Nitai Nama Das and Pagal Dasee were enlisted in the voter list of 1966, a photo copy of which has been annexed to the writ petition as Annexure-A. In paragraph 3 of the writ petition it has been stated that subsequently, he had come to Dudhnoi in the District of Goalpara and his name was enlisted in the voter list of 1985 (Annexure-B photo copy). It is the further case of the petitioner that his and his wife"s name appeared in the voter lists of 1997, 2007 and 2008 (Annexure-C, D and E).

3. In paragraph 7 of the writ petition, the petitioner has stated about the impugned order passed by the learned Tribunal in FT case No. 1039/G/06. The petitioner has admitted that although he appeared before the Tribunal, he did not file any written statement and consequently the order was passed ex parte. No

reason has been assigned as to why the petitioner did not respond to the proceeding before the Tribunal. Now coming to the writ Court, he has placed reliance on the aforesaid documents.

4. In paragraph 10 of the writ petition, it has been stated that although the petitioner was aware of the proceeding before the Tribunal, but he did not know about the stages of the said proceeding nor his engaged counsel informed him to appear before the Tribunal. In paragraph 13, a statement has been made that the petitioner should be given the opportunity to prove his case before the Tribunal.

5. With the aforesaid pleadings the petitioner has invoked the writ jurisdiction of this Court towards assailing the order dated 1.9.2009 passed by the Tribunal declaring him to be an illegal migrant.

6. I have heard Mr. H. Das, learned Counsel for the petitioner and so also Ms. R. Chokraborty, learned Addl. Sr. Govt. Advocate. I have also heard Mr. P. Das, learned Counsel representing the Union of India in the Ministry of Home Affairs. I have also carefully examined the records of the Tribunal. My findings are as follows:

7. The records of the Tribunal revealed that the petitioner and his family members, i.e. wife Smt. Basana Das and his two sons and two daughters, namely Biswajit, Pranjit, Mira and Purnima were duly served with notices asking them to appear before the Tribunal on 20.9.2007. They duly appeared and prayed for time and it appears that the same was granted.

8. After the aforesaid service of notice, it appears that the petitioner and his aforesaid family members were once again served with notice asking them to appear on 1.10.2008 on which date also an application was filed praying for time to file written statement and the same was allowed fixing the matter on 24.10.2008 on which date also prayer was made for adjournment enabling to file written statement and the same was allowed fixing the matter on 3.12.2008.

9. On 3.12.2008 the petitioner and his family members again prayed for time and the same was allowed fixing the matter on 19.12.2008 on which date also another petition was filed praying for time to file written statement and affidavit. Like earlier occasion, time was allowed fixing the matter on 20.1.2009. On the said date also further prayer was made to allow time to file written statement and affidavit and the same was allowed fixing the matter on 18.2.2009. On 18.2.2009 the petitioner and his family members remained absent and thereafter also on subsequent dates which naturally resulted in ex parte order dated 1.9.2009 making a grievance against which the writ petition has been filed.

10. With the above revelation from the records of the Tribunal, there is no manner of doubt that the petitioner and his family members did not respond to the proceeding before the Tribunal and did not prove their case as envisaged u/s 9 of the Foreigners" Act, 1946.

11. In the writ petition, the petitioner has declared his age as 46 years and on 11.11.2009. However, when the enquiry was made against the petitioner and his statement etc. were obtained in the year 2003, his age was recorded as 50 years. In the records of the Tribunal the father of the petitioner has been named as Late Nitai Das. Annexure-A photo copy of the voter list of 1966 names two persons. They are Nitai Nama Das and Pagal Dasee. There is nothing to prove that they are the parents of the petitioner. There is also no explanation as to why their names did not find mention in any other documents including the voter lists published after 1966. In the 1985, 1997, 2007 and 2008 voter lists, the petitioner's father has been named as Nitai Ch. Das. If the petitioner was 50 years of age in the year 2003, his name would have appeared in the voter published prior to 1985.

12. Above aspects of the matter need not detain us as it is not for the writ Court to appreciate evidence, more particularly when the petitioner and his family members inspite of receipt of notice did not respond to the proceeding before the Tribunal, crucial date being 25.3.1971, the petitioner ought to have adduced evidence to prove that he was born prior to the said date in India or had come to Assam from Bangladesh prior to the said date which the petitioner has miserably failed. By placing reliance on certain voter lists, the petitioner cannot claim Indian Citizenship by birth. As has been held by the Apex Court in Bhanwaroo Khan and Others Vs. Union of India (UOI) and Others, , long stay in the country and enrolment in the voter lists would not confer any right on an alien to continue to stay in the country.

13. The foreigners like that of the petitioner and his family members after illegally entering into Assam claims all sorts of right like that of Indian citizen which are easily available in this part of the country to such foreigners. It is the experience of this Court that the authorities at the helm of affairs do not take any prompt action towards detection, detention and deportation of the foreigners. Even after the orders passed by the Foreigners' Tribunal declaring the persons concerned to be the foreigners, no prompt action is taken to apprehend such foreigners and to keep them in detention camp. The resultant effect is that they can easily room around and enjoy all rights available to the Indian citizens including voting right. It has been the experience of this Court that once the writ petition is dismissed upholding the orders passed by the Foreigners' Tribunal, the said foreigners easily do the act of vanishing and the reports furnished by the police are only to the effect that the said foreigners are not traceable and that all out efforts are being made to trace them out. The experience of this Court is also that even after declaring a person to be a foreign national within the stream of 1966-1971 requiring their names to be deleted from the voter list, no steps are taken towards deletion of their names, rather they continue to remain as voters. In case of asking for explanation for such callous approach, the explanation furnished is that due to inadvertence such things happen.

14. The authorities shall bear in mind that the foreigner is not entitled to any

fundamental right guaranteed by Article 19 of the Constitution of India. In this connection I would like to refer to the following observations of the Apex Court in Anwar Vs. The State of J. and K., .

4. The petitioner is not a citizen of India. He is, therefore, a foreigner as defined in the Foreigners Act. Not being a citizen, he is clearly not entitled to any fundamental right guaranteed by Article 19 of the Constitution. He has thus no right to remain within the territories of India. His entry into this country was also without any right and indeed he himself does not claim to have entered into India in accordance with the provisions of the Foreigners Act and the orders made thereunder. The only rights which he can claim in the present proceedings are those contained in Articles 20 to 22.

15. The learned Tribunal in its impugned judgment dated 1.9.2009 has dealt with all these aspects of the matter and I see no reason as to interfere with the same.

16. The writ petition is dismissed. The Superintendent of Police (B) Goalpara and the Deputy Commissioner, Goalpara shall ensure detention and deportation/push back of the petitioner to Bangladesh and deletion of his name from the voter list. Let the compliance report be furnished to this Court on or before 9.2.2010. As regards the other family members of the petitioner this proceeding being only confined to the petitioner, no order is passed in respect of them. However, the Superintendent of Police (B) Goalpara shall find out the stages of the proceeding, if any, against the said family members and in case of any declaration terming them to be foreign nationals, appropriate steps shall be taken towards their deportation/detention/push back to Bangladesh.

17. Let the copies of this judgment and order be sent to the Union of India in Ministry of Home Affairs, Superintendent of Police (B) Goalpara and Deputy Commissioner, Goalpara for their necessary follow up action. Another copy of the same be furnished to Ms. R. Chokrabarty, learned Addl. Sr. Govt. Advocate.

18. Let the LCR be sent down to the Tribunal immediately alongwith a copy of this judgment and order.