
(2011) 01 GAU CK 0036
In the Gauhati High Court
Case No : Writ Petition (C) No. 5032 of 2009

Somiron Nessa @ Noziron Bibi @ Somiron Bibi	APPELLANT
Vs	
The Union of India (UOI) and Others	RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Passports (Entry into India) Act, 1920 — Section 3, 4

Citation : (2011) 01 GAU CK 0036

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : A.M. Mazumdar, M.U. Mondal, R. Islam, S. Sinha and L. Miah, for the Appellant; R. Chakraborty, Addl. Sr. Govt. Advocate, for the Respondent

Judgement

B.K. Sharma, J.—This writ petition was entertained first by order dated 20.11.2009 upon hearing Mr. A.M. Mazumdar, learned senior counsel appearing for the Petitioner. While calling for the records of FT (C) No. 845/G/ 2006 from the Foreigners Tribunal, Goalpara, it was provided that till the next date fixed, which was 2.12.2009, the Petitioner should not be deported from India. Be it stated here that the writ petition has been filed challenging the order dated 30.4.2009 passed by the said Tribunal in the aforesaid case declaring the Petitioner to be a foreign national (illegal Bangladeshi infiltrator) entering into Assam after the cut-off date i.e. 25.3.1971.

2. The order passed by the Tribunal is on the basis of the evidence on record including the fact that the Petitioner, although was 49 years old, except the voter list of 2004 containing her name, she could not produce any other voter list containing her name.

Same is the case with her purported father. Although, she claimed in the proceeding before the Tribunal that her mother was alive but not a single document she could produce in respect of her mother. She also could not establish her date of birth, place of birth etc. She having failed to discharge her burden to prove her Indian citizenship, the Tribunal after threadbare discussion

of the entire evidence on record, answered the particular reference against the Petitioner and in favour of the State by the aforesaid judgment and order dated 30.4.2009.

3. Being aggrieved by the aforesaid judgment, the Petitioner invoked the writ jurisdiction of this Court claiming herself to be an Indian citizen by birth. By the aforesaid interim order dated 20.11.2009, it was provided that till the next returnable date i.e. 2.12.2009, the Petitioner should not be deported from India. The interim order was further continued by order dated 2.12.2009 and 21.12.2009. By order dated 8.1.2010, while formally issuing notice, the interim order was also continued.

4. The matter was heard on 5.8.2010 and thereafter, again on 17.8.2010, on which date, Ms R. Chakraborty, learned Addl. Sr. Govt. Advocate by producing the letter dated 5.5.2010 addressed to the learned State counsel by the Superintendent of Police (B), Goalpara, in which the particulars of 12 cases pertaining to foreign nationals had been furnished, submitted that after the aforesaid interim order passed by this Court in the present proceeding, the Petitioner was not traceable. This aspect of the matter was recorded in the order passed on 17.8.2010. It was also recorded that on perusal of the said letter dated 5.5.2010, some other foreign nationals involved in some other writ petitions, also did the act of vanishing like that of the Petitioner. Recording the experience of this Court, it was observed in the order that once the matters attain finality, the foreign nationals do the act of vanishing and become non-traceable for their detention and/or deportation.

5. Noticing the above, direction was issued to the Petitioner to surrender before the Superintendent of Police (B), Goalpara on or before 31.8.2010. It was further provided that upon such surrender, the Superintendent of Police would decide as to whether the Petitioner should be detained in the detention camp or should be allowed to remain free on furnishing adequate security during the pendency of the writ petition. It was also provided that in the event of furnishing adequate security, the Superintendent of Police should ensure that the Petitioner would not do the act of vanishing and that if the writ petition was decided against her, she would be available for detention and deportation.

6. In terms of the aforesaid interim orders, not to deport her from India and requiring her to surrender before the jurisdictional Superintendent of Police, the Petitioner was required to surrender before the Superintendent of Police (B), Goalpara on or before the stipulated date, which was fixed by the aforesaid order dated 17.8.2010. The stipulated date was 31.8.2010. However, when the matter was taken up on 16.9.2010, Ms R. Chakraborty, learned Addl. Sr. Govt. Advocate apprised the Court that the Petitioner did not surrender before the Superintendent of Police (B), Goalpara in terms of the aforesaid order and thus, there was violation of the said order. On being apprised the act of vanishing on the part of the Petitioner and non-compliance of the interim direction passed by this Court, it was recorded in the order dated 16.9.2010 that the Petitioner was

not entitled to any hearing of the writ petition on merit. Direction was issued to the Superintendent of Police to apprehend the Petitioner and deport her to Bangladesh immediately.

7. At that stage, Mr. M.U. Mondal, learned Counsel for the Petitioner prayed for extension of the time limit fixed by the aforesaid order dated 17.8.2010 enabling him to make an endeavour by way of communication with the Petitioner directing her to surrender before the Superintendent of Police (B), Goalpara within 7 days. Acceding to the said request made by Mr. Mondal, learned Counsel for the Petitioner, further 7 days time was granted with the direction to the Superintendent of Police (B), Goalpara to detain the Petitioner in the detention camp, but not to deport her till final adjudication of the writ petition.

8. The matter was taken up again on 6.12.2010 and Ms R. Chakraborty, learned State counsel once again apprised the Court that in terms of the earlier orders passed by this Court, the Petitioner did not surrender before the Superintendent of Police. Mr. Mondal, learned Counsel for the Petitioner also apprised the Court by producing the letter dated 7.12.2010 addressed to the Petitioner directing her to appear before the Superintendent of Police (B), Goalpara in terms of the aforesaid orders passed by this Court. Mr. Mondal, learned Counsel for the Petitioner submitted that in spite of such letter addressed to her, the Petitioner did not surrender before the Superintendent of Police. On the other hand, Ms R. Chakraborty, learned State counsel also submitted that the Petitioner was not traceable and that her whereabouts were not known as she did the act of vanishing.

9. In view of the above, in the order passed on 6.12.2010, it was provided that it would be open for the police to issue warrant of arrest against the Petitioner and also to attach her property. It was also provided that it would be open for the police to question the near relatives of the Petitioner to know her whereabouts. It was observed that the matter was required to be taken seriously inasmuch as the Petitioner, after invoking the writ jurisdiction of this Court and after obtaining the stay order from the Court, did the act of vanishing and in spite of repeated orders passed by this Court, she did not surrender before the police by abusing the process of law. It was recorded that the entire efforts towards detection and deportation of foreign nationals have been made mockery. The Court also expressed unhappiness on the silence being maintained by the State administration in such a serious matter.

Today, I have again heard Mr. M.R. Khandakar, learned Counsel for the Petitioner as well as Ms R. Chakraborty, learned Addl. Sr. Govt. Advocate. I have also heard Mr. J.M.A Choudhury, learned Central Govt. Counsel.

10. The submissions made by the learned Counsel for the parties are the same very repetition as that of the earlier proceedings mentioned above. While the learned Counsel for the Petitioner submits that the whereabouts of the Petitioner are not known and she has also not contacted the learned Counsel, Ms R.

Chakraborty, learned State counsel also submits that in spite of best efforts being made by the police administration, the Petitioner is not traceable. Mr. JMA Choudhury, learned CGC submits has expressed his helplessness in the matter.

11. This Court has noticed in a number of writ petitions that the foreign nationals after invoking the writ jurisdiction of this Court against the orders passed by the Foreigners Tribunal declaring them to be foreign nationals do the act of vanishing, once a final decision is given in the writ petition upholding the orders passed by the Foreigners Tribunals. This aspect of the matter finds mention in the order dated 10.11.2009 passed in WP(C) No. 3236/2009. The relevant portion of the order is quoted below:

Heard learned Counsel on the interim relief. It is hereby provided that pending disposal of the writ petition, the Petitioner may not be deported from India. However, the same will subject to the condition that the Petitioner will surrender the Superintendent of Police, Morigaon, on or before 24.11.2009, who in turn shall decide as to whether the Petitioner should be detained in detention camp or in jail till the decision is arrived at in the writ petition. It is made clear that if the Petitioner furnishes adequate security to the satisfaction of the Superintendent of Police, Morigaon, it will be open for him to allow the Petitioner to go on bail. However, such surety and/or security must be of such nature that in the event of dismissing the writ petition upholding the order of the Tribunal, no excuse will be entertained that the whereabouts of the Petitioner is not known and/or he is not traceable. In other words, in the event of enlarging the Petitioner on bail, the Superintendent of Police will ensure his presence within the local limits of the jurisdictional Police Station till further order from this Court.

Further, the Superintendent of Police, Morigaon, shall also obtain the photographs, fingerprints and other physical identification of the Petitioner as a necessary precaution.

Above precautionary measures are ordered having regard to the experience of the Court that after the orders passed by the Foreigners Tribunal declaring the person or persons concerned to be illegal migrants from Bangladesh, they invoke the writ jurisdiction and once the orders of the Tribunal are upheld with direction to deport them to Bangladesh, they do the act of vanishing and the authority expresses its difficulty in deporting them. In this connection, the judgments and orders passed in WP(C) 643/2009 (Ms Anowara Khatun v. Union of India), WP(C) 1258/2009 (Mrs. Aisa Bibi v. Union of India & Ors), WP(C) 1311/2009 (Nidhan Biswas v. Union of India & Ors), WP(C) 1307/2009 (Md. Khused Ali v. Union of India & Ors), WP(C) 190/2009 (Md. Abdul Kuddus v. State of Assam & Ors), WP(C) 698/2009 (Munindra Ch. Roy v. Union of India & Ors), WP(C) 747/09 (Himangshu Sarkar v. State of Assam & Ors), WP(C) 152//09 (Rajia Khatun v. Union of India & Ors), WP(C) 464/09 (Md. Samsul Haque and Ors. v. State of Assam & Ors), WP(C) 1044/09 (Salema Bibi (Khatun) v. Union of India & Ors), WP(C) 80/09 (Smt. Malati Das v. Union of India & Ors), WP(C) No. 1334/09 (Mameza Khatun v. Union of India & Ors), WP(C) 191/09 (Upendra Roy v. Union

of India), WP(C) 1708/08 (Samsul Hoque v. State of Assam & Ors), WP(C) 5497/08 (Nathu Ram Biswas v. Union of India & Ors), WP(C) 5545/08 (Gopal Ch. Das v. Union of India & Ors), WP(C) 1166/09 (Tarabhanu v. Union of India & Ors), WP(C) 1045/09 (Mustt. Sahera Khatun v. Union of India & Ors), WP(C) 5542/2008 (Mustt. Hazera Khatun v. Union of India & Ors) and WP(C) 5560/2008 (Md. Jalal Uddin v. Union of India & Ors), may be referred to. In most of the cases, the jurisdictional Superintendent of Police has submitted report that the Bangladeshi nationals are not traceable and their whereabouts are not known.

12. In the instant case also, the Petitioner after invoking the writ jurisdiction and obtaining interim relief not to deport her to Bangladesh pursuant to the order passed by the Tribunal, she has disobeyed the orders passed by this Court requiring her to surrender before the Superintendent of Police (B), Goalpara for consideration as to whether she should be detained in detention camp till final adjudication of the writ petition or should be enlarged on bail upon furnishing adequate security.

13. In spite of best efforts of monitoring being made by this Court, the only submission that can be made by the learned Counsel for the parties is that the Petitioner is not traceable and her whereabouts are not known and thus, except expressing helplessness by the State and the Central Government, it seems that no serious efforts have been made to apprehend the Petitioner and for that matter, to take appropriate action towards detection and deportation of the foreign nationals whose presence in the State in huge numbers (in lakhs) is not in dispute. It is really not understood as to what purpose the Foreigners Tribunals have served except passing the orders, if the said orders are not in a position to be implemented by the mighty administration of the State and the Central Government.

14. In view of the above, the Petitioner is not entitled to any further hearing in the matter for resorting to the abuse the process of law. Independent of the same, I have considered her case on merit in reference to the evidence on record and the findings recorded by the learned Tribunal, about which discussions have been made above. Consequently, the writ petition is dismissed directing the Respondents once again to apprehend the Petitioner and keep in detention camp till such time she is deported from India to Bangladesh.

15. Although the writ petition has been finally disposed of, but to monitor the action plan of the Respondents, the matter shall be again listed for further order on 11.02.2011. In the meantime, for proper handling of the cases of foreign nationals, the following directions are issued to be followed by all concerned authorities:

(1) Once a notice is issued to suspected foreign national for appearance either before the police administration or before the Foreigners Tribunal, the jurisdictional Superintendent of Police will ensure that such suspected foreign national cannot do the act of vanishing.

(2)At the time of issuance of notice itself and/or making the reference to the Foreigners Tribunal, pertaining to a suspected foreign national, the Superintendent of Police shall ensure taking fingerprints and photographs of such suspected foreign national.

(3)The Superintendent of Police shall also consider as to whether the detention of such suspected foreign national is required pending adjudication of the matter by the Foreigners Tribunal. Such detention is also permissible as per the provisions of the Passport (Entry into India) Act, 1920. Section 4 of the said Act empowers the authorized officers to arrest without warrant any person who has contravened or against whom a reasonable suspicion except that he has contravened any rule or order made u/s 3 of the Act.

(4)The jurisdictional Superintendent of Police will be entitled to take all such measures towards ensuring that the suspected foreign nationals cannot do the act of vanishing during the pendency of the proceeding before the Tribunal or in this Court.

(5)The Director General of Police, Assam and the Commissioner to the Government of Assam in the Home Department shall issue appropriate direction to all concerned taking into account the aforesaid directions.

(6)The Union of India in the Ministry of Home Affairs shall also ensure that the suspected foreign nationals cannot do the act of vanishing and suggest appropriate measures to the State Government to be followed with all seriousness.

16. On the next date fixed, i.e. 11.02.2011, both the State and Union Government shall apprise the Court about the follow up action taken in terms of the aforesaid directions. In addition, the Director General of Police, Assam and the Commissioner to the Government of Assam in the Home Department and the Superintendent of Police (B), Goalpara shall furnish reports regarding apprehension and deportation of the Petitioner to Bangladesh.

17. Let copies of this judgment and order be furnished to both Mr. Choudhury, learned CGS and Ms Chakraborty, learned State counsel for their necessary follow up action. Registry shall also circulate this order to all the Foreigners Tribunals in the State and the Superintendent of Police (B) of each district. Copies of this order shall also be sent to the Central and State Governments in the Home Department and the Director General of Police, Assam.