

(2013) 08 GAU CK 0072
In the Gauhati High Court
Case No : WP (C) 2134 of 2013

Sri Gopal Das

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citizenship Act, 1955 — Section 6A(1)(d)
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 106, 5
Foreigners Act, 1946 — Section 9

Citation : (2013) 08 GAU CK 0072

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : E. Ahmed, for the Appellant; H.M. Phukan, GA, Assam And Ms. B. Das, CGC, for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—This writ petition is directed against the order dated 28.3.2012 passed by the learned Foreigners Tribunal, Silchar in FT Case No. FT(2nd) Case No. 173/2007 (PS Katigora IO case No. 476/06) (State Vs. Gopal Chandra Das). By the said judgment the learned Member, Foreigners Tribunal has declared the petitioner to be an illegal Bangladeshi migrant of post 25/03/1971 who entered into India from Village-Jamdor, P.S.-Jakiganj, Sylhet, Bangladesh. I have heard Mr. E. Ahmed, learned counsel for the petitioner and have also heard Mrs. H.M. Phukan, learned State Counsel and so also Ms. B. Das, learned CGC. I have perused the entire materials on record received from the Tribunal.

2. On receipt of the notice from the Tribunal, the petitioner duly appeared and filed written statement stating inter alia that he was born in the year 1968 at Village-Mahadebpur Part-I. He further stated in his written statement that his father's name appears in the voter list of 1970 under No. 17, Katigora Constituency. He also stated that his name appeared in the voter list of 1993 under No. 15 Katigora Constituency. He also referred to his name appeared in

the 1997 and 2005 voter lists of Village-Biswambarpur.

3. The petitioner adduced oral evidence and exhibited voter list of 1970 (Ext. 1) purportedly containing his father's name; voter list of 1997 (Ext-2) purportedly containing his name and the deed of purchase (Ext-3) of 1992. Ext. 4 is the Gaon Panchayat certificate. The petitioner apart from adducing his oral evidence, also adduced oral evidence of one Shri Ranjan Das.

4. On behalf of the State, the Enquiry Officer who conducted the enquiry leading to filing of the report against the petitioner was examined and he proved the Ext. A, B & C report submitted by him.

5. The petitioner in his deposition stated that he was born in village-Mahadebpur Part-I. However, in his cross examination he stated that he had no document to show that he was born in the said village. His supporting witness DW-2 also deposed that the petitioner was born at Mahadebpur. However, none of the witnesses could state anything about the date, month and year of birth of the petitioner. It could not be established that the petitioner was born in the said village. As regards the Ext. 1 voter list of 1970 containing the name of one Surendra Das, the Tribunal in absence of any other voter list pertaining to the said purported father of the petitioner, prior or after 1970, although in the said voter list his age was recorded as 41 years disbelieved the story made out by the petitioner that he was born at Village-Mahadebpur as the same could not be proved by cogent evidence. The petitioner failed to prove that his parents were at Mahadebpur part-I.

6. As regards the voter list of 1997 containing the name of the petitioner, the Tribunal has rightly held that the same by itself cannot lead to the inference that the petitioner is not a post 25/03/1971 illegal Bangladeshi migrant. Ext. 4 certificate issued by the particular Gaon Panchayat is of 25/03/2008 which does not establish the Indian citizenship of the petitioner as the same is only in respect of certifying the petitioner to be an inhabitant of Biswambarpur at the time of issuance of the said certificate.

7. As against the aforesaid evidence adduced by the petitioner, the Enquiry Officer SI(B) of Police, duly proved the Ext. A by which on completion of the enquiry, a prayer was made for registration of a case against the petitioner. Ext. B is the particulars/information collected by the said witness including the examination of the petitioner. Ext. C is the final report suspecting the petitioner to be a post 25/03/1971 illegal migrant. This witness proved the Ext. A, B and C and he in his deposition stated that during enquiry, the petitioner failed to produce any document to prove that he is an Indian citizen. According to him, the petitioner entered into India after 25/03/1971 without valid document from village-Jamdar, PS-Jakiganj, District-Sylhet of Bangladesh. The evidence adduced by this witness could not be dislodged by the petitioner.

8. In *Sarbananda Sonowal Vs. Union of India (UOI) and Another*, the Apex Court while discussing the problem being faced by the State of Assam due to

illegal migration and their continued presence in the State has been vividly discussed the alarming situation. While striking out the IM(D)T Act, 1983, the Apex Court also dealt with the modality of proving one's Indian citizenship. It has been emphasized that the burden of proof is always on the proceedee as per provisions of Section 9 of the Foreigners Act, 1946. In *Sarbananda Sonowal-I*, the Apex Court dealing with the burden of proof, made the following observation:-

26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like u/s 6-A(1)(d) of the Citizenship Act. All these facts would be necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

9. Above apart, merely by producing some photocopies, one cannot establish his Indian citizenship. Even in case of production of certified copies of the documents, something more is required as per the Law of Evidence. As has been held by the Apex Court in *L.I.C. of India and Another Vs. Ram Pal Singh Bisen*, , even admission of a document in evidence does not amount to its proof, in other words, mere making of exhibit of a document does not dispense with its proof, which is required to be done in accordance with law. It was the duty of the petitioners to have proved the documents in accordance with law. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amounts to admission of contents but not its truth. Thus, the documents (Photocopies) having not been produced and marked as required under the Evidence Act, cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a Court.

10. Needless to say that the High Court exercising its power of judicial review under Article 226 of the Constitution of India cannot sit on appeal over the finding of facts recorded by the Court/Tribunal. It is only when the Court/Tribunal exercise a jurisdiction without being empowered or in excess of it or fails to exercise the vested jurisdiction or acts illegally, the Writ Court exercising its jurisdiction can interfere with the same. The High Court can interfere with the order of the Tribunal exercising its writ jurisdiction only if it is proved that it is a case of no evidence at all or there is error apparent on the face of the record.

The power of judicial review under Article 226 of the Constitution is limited only to correction of errors apparent on the face of the records and does not need long drawn out process of reasons on points whether there may be conceivably two views. In the instant case, I do not find any infirmity in the impugned judgment and order requiring any interference of this Court exercising its power of judicial review under Article 226 of the Constitution of India.

11. The writ petition is dismissed. There shall be no order as to costs.

12. Let copies of this judgment be sent to SP(B), Silchar and the Deputy Commissioner, Silchar for taking further course of action towards detention of the petitioner in the detention camp for his deportation to the country of his origin and for deletion of name from the voter list. Copies of this order shall also be sent to the Union Govt. in the Ministry of Home and so also to the State Government in the Home Department for their necessary follow up action in terms of this judgment and order.

13. Before parting with the case records, I place on record the amended provision of Citizenship Rules 1956 and its application to the State of Gujarat and Rajasthan as was brought in by gazette notification dated 1.3.2004. By the said amendment, after Rule 8 of the Citizenship Rules, 1956, Rule 8A was inserted which is quoted below:

8A. Authority to register as Citizens in States of Gujarat and Rajasthan-

(1) In the case of registration of citizens in the State of Gujarat,-

(a) in relation to the district of Kutch, Patan, Banaskantha and Ahmedabad,-

(i) in respect of Pakistan nationals of minority Hindu community displaced consequent to the wars between India and Pakistan in the years 1965 and 1971, the dependants of such persons married to Indian Citizens or persons of Indian origin, the authority to register a person as a citizen of India under Clauses (a), (c), (d) and (e) of subsection (1) of Section 5 of the Act shall be the concerned Collectors of the districts;

(ii) in respect of minority Hindus with Pakistan citizenship who have migrated to India more than five years back with the intention of permanently settling down in India and have applied for Indian citizenship, the authority to register a person as a citizen of India under Clauses (a), (c), (d) and (e) of sub-section (1) of section 5 of the Act shall be the concerned Collector of the district where the applicant is ordinarily resident;

(b) in relation to the districts not covered under sub-clause (i) of clause (a), the authority to register a person as a citizen of India under clauses (a) (c), (d) and (e) of sub-section (1) of section 5 of the Act shall be the Secretary, Home Department of the State of Gujarat.

(2) In the case of registration of citizens in the State of Rajasthan,-

(i) in relation to the district of Badmar and Jaisalmer, in respect of Pakistan nationals of minority Hindu community displaced consequent to the wars between India and Pakistan in the years 1965 and 1971, the dependants of such persons married to Indian Citizens or persons of Indian origin, the authority to register a person as a citizen of India under clauses (a), (c), (d) and (e) of subsection (1) of section 5 of the Act shall be the concerned Collector of the district;

(ii) in respect of minority Hindus with Pakistan citizenship who have migrated to India more than five years back with the intention of permanently settling down in India and have applied for Indian citizenship, the authority to register a person as a citizen of India under clauses (a), (c), (d) and (e) of sub-section (1) of section 5 of the Acts hall be the concerned Collector of the district where the applicant is normally resident.

14. The aforesaid provision has been referred to in view of the submissions often made that the Hindus who have been displaced from Bangladesh and or have migrated to Indian due to oppression there should be treated differently than the illegal Bangladeshi migrants. So far as this Court is concerned, it has already been observed in *Sarabari Begum (Mustt.) @ Syera Begum and Others Vs. State of Assam and Others*, that the issue being a political one and the laws relating to foreigners making no distinction in that line, this Court is not the appropriate forum to deal with the said issue and that too in this type of proceeding. In this connection, paragraph 2 of the said judgment is quoted below:

219. A submission was made, particularly in WP(C) No. 32/2008 that the petitioners being Hindus and even if they have come from Bangladesh, same being the result of oppression meted out to them there, they must not be branded as illegal migrants and that having regard to the theme of partition of India, they should be regarded as refugees from Bangladesh. Suffice is to say that the laws relating to foreigners do not make any distinction in that line. The issue raised is purely a political one and this Court is not the forum to comment upon the same, it being not in its scope, ambit and jurisdiction.

Let the LCR be sent down along with a copy of this judgment and order.