
(2009) 08 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 1166 of 2009

Tarabhanu

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-08-2009

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2009) 1 GLD 571 Supp

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

Bench : Single Bench

Judgement

B.K. Sharma, J.—The petitioner has been declared to be a foreigner (illegal Bangladeshi migrant), entering into Assam after 25.3.1971. The impugned order is dated 10.11.2008, passed by the Foreigners Tribunal, Goalpara, in FT Case No. 1130/G/06. The proceeding against the petitioner suspecting him to be a foreigner was initiated on the basis of the reference made by the State Police. The impugned order dated 10.11.2008 is an ex parte order.

2. I have heard Mr. H. Das, learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned Additional Senior Government Advocate, Assam. None appeared for the Union of India. I have also carefully gone through the records of the Tribunal.

3. According to the petitioner, she duly received notice from the Tribunal and appeared on 6.8.2008 praying for time to file written statement. On the next date fixed, which the petitioner states to be 3.11.2008, due to bandh call given by an organisation, the petitioner could not appear before the Tribunal and on the following day i.e. 4.11.2008 also, she remained absent. It is the case of the petitioner that on that day, the lawyers fraternity of Goalpara District had organised silent demonstration protesting against the serial bomb blasts in Assam. On 10.11.2008 also which was the next date fixed, the petitioner remained absent without any step and accordingly, the Tribunal passed the ex parte order.

4. As against the aforesaid stand of the petitioner in the writ petition, the records of the Tribunal speak otherwise. On 6.8.2008, the petitioner appeared before the Tribunal and prayed for time to file written statement. Time was granted fixing the matter on 22.8.2008, on which date also the petitioner prayed for time, which was allowed, fixing the matter on 12.9.2008. Like the earlier occasions on 12.9.2008 also, the petitioner once again prayed for time which was also granted fixing the matter on 3.11.2008.

5. As to what transpired thereafter has been stated above. The records of the Tribunal has revealed that because of the Assam Bandh call given by some organisation, the Tribunal did not function on 3.11.2008 and accordingly the matter was taken up on 4.11.2008, on which date the petitioner remained absent. The stand of the petitioner that because of the silent demonstration resorted to by the lawyers fraternity, she could not appear, is not at all correct. Even otherwise also, she ought to have appeared on 4.11.2008. The Tribunal passed an order for ex parte hearing of the matter on 10.11.2008. It was incumbent on the part of the petitioner to appear before the Tribunal even if her story in respect of the dates 3.11.2008 and 4.11.2008 is accepted.

6. When the petitioner did not appear before the Tribunal on 10.11.2008, the Tribunal had no other alternative than to pass the order ex parte answering the reference against the petitioner and in favour of the State. The Tribunal in its order has observed that when the law requires the suspected foreigner to discharge the burden of proof towards establishing his/her Indian citizenship, it was incumbent on the part of the petitioner to discharge the said burden.

7. The reference came to be made when the District Electoral Registration Officer doubted the inclusion of the name of the petitioner in the Draft Electoral Roll of 1997. On verification, it was found that, in fact, the petitioner is an illegal Bangladeshi migrant who entered into Assam after the cut off date i.e. 25.3.1971. Accordingly, after observing necessary formalities, the reference was made. The petitioner instead of discharging her burden as envisaged u/s 9 of the Foreigners Act, 1946, wiffully avoided the proceeding before the Tribunal.

8. As noticed above, in the writ petition, the petitioner has withheld the intervening dates between 6.8.2008 to 3.11.2008 which are 22.8.2008, 12.9.2008. On both the dates, the petitioner appeared and prayed for time to file written statement, which she failed to do. The application filed by the petitioner for vacating the ex parte order has been rejected by the Tribunal by its order dated 3.1.2009. The Tribunal has exercised the particular discretion not to vacate the ex parte order having regard to the facts and circumstances involved in the case and as discussed in the order. Such discussion have revealed that the petitioner took recourse to falsehood in making the application for vacating the ex parte order. The Tribunal has rightly observed that the plea advanced by the petitioner is not at all acceptable and that such course of action, if accepted would lead to a never ending business, more particular, when the Foreigners Tribunal are burdened with thousand of such cases.

9. It may not be out of place to discuss about the conduct of the petitioner in this proceeding. By order dated 20.3.2009, the petitioner was directed to surrender before the Superintendent of Police, Goalpara within 10 (ten) days. On 29.4.2009, when the matter was again taken up, a submission was made on behalf of the petitioner that the petitioner had appeared before the Superintendent of Police, Goalpara along with the copy of the order dated 20.3.2009, but neither the Superintendent of Police, Goalpara nor his subordinates took her into custody. To verify such stand on behalf of the petitioner, the Superintendent of Police, Goalpara, was directed to furnish report, who in turn furnished report dated 7.5.2009. As per the said report, the petitioner never appeared before the police and that the plea of the petitioner reflected in the order dated 29.4.2009 that she had appeared before the Superintendent of Police, Goalpara was not correct and false. The report further revealed that the petitioner was taken into custody thereafter. Thus, before this Court also, the petitioner took recourse to falsehood.

10. In the writ petition, it is the stand of the petitioner that she is an Indian citizen by birth. At the time of filing the writ petition on 17.3.2009, the petitioner was 42 years of age as per the declaration made in the affidavit sworn in support of the writ petition. The petitioner claims that the names of her parents appeared in the voter list of 1966. In support, she has annexed the photocopy of the voter of 1966 (extract only), showing the name of one Mokbul Hussain, whom she claims to be her father. However, there is no explanation as to why his name does not appear in other voter list and even prior to 1966, inasmuch as, said Mokbul Hussain was 32 years of age in 1966.

11. During the course of hearing, the petitioner produced the voter list of 1989 showing the name of one Tarabhanu, aged 30 years. If said Tarabhanu was 30 years of age in 1989, she will be now 50 years of age in 2009. If said Tarabhanu is the petitioner, it is not understood as to how the petitioner could be 42 years of age as per the declaration made in the writ petition.

12. Even it is accepted that the 1989 voter list and contain the name of the petitioner, same by itself would not establish the Indian citizenship of the petitioner, by birth, as has been claimed in the writ petition. The cut off date is 25.3.1971 and unless the linkage is established to pre 25.3.1971 period, the 1989 over list is of no help to the case of the petitioner. Further, there is also no explanation as to why the name of the petitioner has not been included in any other voter list.

13. During the course of hearing, the petitioner also produced a self declaration dated 4.11.2004 in the particular format. The said declaration was made for inclusion of name in the voter list and was signed by one Ainal Haque, husband of the petitioner. If the name of the petitioner was included in the 1989 voter list, it is also not understood as to why such a fresh declaration was to be made in 2004 for inclusion of name in the voter list.

14. As discussed above, the case of the petitioner came to be detected when her name was included in the draft voter list of 1997. Upon verification and cross verification, it was found that she was not an Indian citizen. Accordingly, the reference was made to the Tribunal and as to what transpired thereafter, has been discussed above.

15. For the illegal Bangladeshi migrant, it has become a matter of convenience not to respond to the proceeding before the Tribunal. It is the experience of this Court that in almost all the cases, the Tribunals are destined to pass ex parte order in absence of any response from the suspected foreigners. Once an ex parte order is passed, the blame game starts, either blaming the engaged advocate or the Tribunal, unmindful of the fact that the issue relating to foreign nationals is a very serious one and the suspected foreigner is required to establish his Indian citizenship by discharging the burden cast on him u/s 9 of the Foreigners Act, 1946. Considering the magnitude of the problem in Assam, any amount of leniency shown will be antithesis to the very purpose of establishing the Foreigners Tribunal, pursuant to the direction of the Apex Court in Sarbananda Sonowal Vs. Union of India (UOI) and Another, and Sarbananda Sonowal Vs. Union of India (UOI),

16. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly it is dismissed. The Superintendent of Police, Goalpara shall ensure deportation of the petitioner, as expeditiously as possible, and shall report compliance on or before 14.9.2009.

17. List on 14.9.2009 for furnishing compliance report by Superintendent of Police, Goalpara.

18. Let copies of this judgment and order be sent to Union of India and the Superintendent of Police, Goalpara immediately and another copy be furnished to Ms. R. Chakraborty, learned Additional Senior Government Advocate necessary for follow up action.

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