
(2018) 03 GAU CK 0074
In the Gauhati High Court
Case No : WP(C) 3632 of 2017

ULLASH CH. DAS

APPELLANT

Vs

UNION OF INDIA and 4 ORS

RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Citizenship Act, 1955 — Section 6A
Foreigners' Act, 1946 — Section 9

Citation : (2018) 03 GAU CK 0074

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan, J.

Mr. Dipankar Kumar Bagchi, a Legal Aid Counsel of this Court on being entrusted by the Gauhati High Court Legal Services Committee has come

forward to take up the cause of the petitioner and in fact has filed the present writ petition on behalf of the petitioner Sri Ullhas Chandra Das.

In this writ petition, challenge has been made to the legality and correctness of common order dated 4.12.2012 passed by the then Foreignersâ??

Tribunal, Goalpara in FT Case Nos. 2404/G/2010 and 2405/G/2010 declaring the proceedees to be foreigners who had illegally entered into India

(Assam) from Bangladesh after 25.3.1971.

In both the cases (references), the proceedees were Ullash Chandra Das (petitioner), Menoka Das, Jogesh Das, Sunil Das and Dayal Das.

Mr. Bagchi submits that though proceedees belong to the same family, petitioner is presently in detention and whereabouts of his other family

members are not known to him. Therefore, this writ petition is confined only to

the cause of the petitioner Sri Ullash Chandra Das.

At the outset, we find that there were two references against the same sets of proceedees. It is seen that notices issued by the Tribunal were served

upon the proceedees whereafter they had entered appearance before the Tribunal and filed written statement along with copies of some documents.

But thereafter, the proceedees did not adduce evidence though more than eight dates were granted for adducing evidence. Tribunal then considered

the documents filed by the proceedees along with their written statement. Case pleaded by the proceedees in the written statement was that Sri Ullash

Chandra Das and Smti Menaka Das were born in East Pakistan and that they had entered into India in the year 1964. Taking the view that

proceedees failed to prove their contention and thereby failed to discharge their burden, Tribunal passed the order dated 4.12.2012 answering both the

references in favour of the State in the above manner.

Mr. Bagchi submits that petitioner was almost 85 years of age at the time of filing the writ petition. Therefore, when the impugned order was passed,

he must have been around 80 years of age. Because of old age and related ailments, he could not properly defend himself. But he asserts that he had

come to India in the year 1964 from East Pakistan.

While we do not approve of the conduct of the petitioner in not adducing evidence before the Tribunal, we feel that notwithstanding the default and

delay of the petitioner, it would be in the interest of justice if one more opportunity is granted to the petitioner to adduce evidence in support of his

claim that he had come to India along with Maneka Das from East Pakistan in the year 1964. At this stage, we may mention that under Section 6 A

(2) of the Citizenship Act, 1955, as amended, any person of Indian origin who had entered into Assam prior to 1.1.1966 and since then has been

ordinarily resident in Assam shall be deemed to be a citizen of India from the first day of January, 1966. Therefore, as per this deeming provision, if a

person of Indian origin had entered into Assam prior to 1.1.1966 and since then has been ordinarily residing in Assam, he would be deemed to be a

citizen of India from 1.1.1966. But this deeming provision would take effect only if such a person is able to prove the material facts of his entry into

Assam prior to 1.1.1966 and of ordinarily residing in Assam since then. In the context of Section-9 of Foreigners Act, 1946, the burden would be

on that person to prove these material facts.

That being the position, we set aside the order dated 4.12.2012 in respect of the petitioner, Sri Ullash Chandra Das. Superintendent of Police (Border),

Goalpara shall release Sri Ullash Chandra Das from detention but ensure that the presence of the petitioner is properly monitored. On such release,

petitioner shall appear before the Foreignersâ?? Tribunal No.1 at Goalpara in connection with FT Case Nos. 2404 and 2405/G/2010 on 19.4.2018 at

10.30 am whereafter Tribunal shall proceed with the reference in accordance with law from the stage of adducing evidence by the petitioner.

However, we make it clear that if there is any default on the part of the petitioner henceforth, Tribunal would be at liberty to pass such order(s) as

may be deemed fit and proper.

With the above direction, writ petition is disposed of.

Before parting with the record, we place on record our appreciation for the assistance rendered by Mr. DK Bagchi, learned Legal Aid Counsel and

direct the Gauhati High Court Legal Services Committee to pay his fees as per Schedule.

Registry to inform the concerned Foreigners Tribunal, Deputy Commissioner and Superintendent of Police (Border) for doing the needful.

A copy of this order may be furnished to learned Standing Counsel, Election Commission of India and State Coordinator, NRC.