

(2013) 08 GAU CK 0008

Gauhati High Court

Case No: WP (C) 2574 of 2013

Habibar Rahaman

APPELLANT

Vs

The Union of India and The State
of Assam

RESPONDENT

Date of Decision: Aug. 20, 2013

Citation: (2014) 1 GLD 118 : (2013) 5 GLT 319

Hon'ble Judges: Biplab Kumar Sharma, J

Bench: Single Bench

Advocate: A.R. Sikdar, for the Appellant; B. Dutta, GA, Assam and Mr. M. Bhagabati, CGC, for the Respondent

Final Decision: Dismissed

Judgement

Biplab Kumar Sharma, J.

Heard Mr. A.R. Skidder learned counsel for the petitioner. Also heard Mr. M. Bhagabati, learned CGC. I have also heard Mrs. B. Datta, learned State Counsel. By means of this writ petition filed in 2013 (to be precise on 03.05.2013), the petitioner seeks to challenge the orders passed by the then IM(D)T Barpata more than 8 years back. The said orders are dated 11.02.05 and 07.04.2005 passed in IM(D)T, case No. 2556/2003. Admittedly, on receipt of notice, the petitioner did not respond to the proceeding before the Tribunal. Accordingly the Tribunal passed order for ex-parte hearing in which the Local Verification Officer was examined by the state. The LVO in his deposition referring to the investigation carried out by him in respect of the suspicion regarding the citizenship of the petitioner, in his deposition stated that during enquiry, the petitioner failed to submit any relevant document supporting his nationality. Accordingly, he submitted Report (Ext. 1) with his signature (Ext. 11).

2. By the first impugned order dated 11.02.2005 the Tribunal held the petitioner to be an illegal migrant. After the aforesaid ex-parte order, the petitioner filed an application for setting aside the ex-parte order. The ground assigned in the said application was that he could not appear before the Tribunal due to flood. On

perusal of the record it appears that the notice was served on the petitioner in August, 2004 as recorded in the order dated 04.08.2004. However the petitioner did not appear and accordingly the matter was adjourned to 17.09.2004. On 17.09.2004 also the petitioner did not appear. However, the learned Tribunal fixed the matter on 02.11.2004, on which date also the petitioner did not appear. Thereafter, the matter was again fixed on 20.12.2004 and 21.01.2005 and on both the dates the petitioner did not appear. Thus, the plea of the petitioner that he could not appear due to flood is not at all tenable. In the month of November and December there is no question of flood in Assam.

3. The Learned Tribunal taking note of the aforesaid facts passed the second impugned order rejecting claim of the petitioner for setting aside the ex-parte order. The said order is dated 07.04.2005.

4. After the aforesaid two orders the petitioners preferred appeal No. 13/2005 before the then IM(D)T Appellate Tribunal. However, the appeal stood abetted in view of the judgment in the case of [Sarbananda Sonowal Vs. Union of India \(UOI\) and Another](#). In that view of the matter if the petitioner is aggrieved by the aforesaid two orders, he ought to have taken recourse to the remedy available to him in law instead of waiting for long 8 years.

5. Mr. A.R. Sikdar learned counsel for the petitioner submits that the petitioner was unaware of the aforesaid judgment in Sarbananda Sonowal. Apart from the fact that such a plea is not at all tenable in law, there is also no whisper as to what had prevented the petitioner to pursue the case before the Tribunal and/or the Appeal. There cannot be two pleas at the same time i.e. in one hand to take the plea that the case of Sarbananda Sonowal was not known to the petitioner and on the other hand to take the plea that the appeal stood abetted because of the said case and accordingly no step was required to be taken in the appeal. Admittedly the writ petitioner did not take any step in the appeal. It is not the case of the petitioner that he was pursuing the appeal.

6. Apart from the above the ground assigned to set aside the ex-parte order of the then IM(D)T is not at all convincing. The only ground assigned is that the petitioner could not appear due to flood but the fact of the matter is that he was to appear in November 2004 during which time there was no flood.

7. In the writ petition also there is inherent contradiction. The petitioner has declared his age as 46 years as on 2.05.2013 i.e. the date of swearing the affidavit in support of the writ petition. However, in the Annexure -A voter list of 2004 his age is shown as 48 years son of Amser Ali. Again in the voter list of 2010, the name of one Habibar Rahaman son of Anser Ali appears, declaring his age as 50 years.

8. The petitioner has contended that, his grand father is Aiz Uddin but his name was wrongly recorded as Raiz Uddin. Thus it is the convenience of the petitioner to pick up any name from the voter list so as to contend that the said name pertains to him.

However, this aspect of the matter need not detain us, which has been pointed out only to show the inherent contradictions.

9. At this stage Mr. Bhagabati learned CGC submits that although the petitioner has declared his age in the writ petition as 46 years but prior to the voter list of 2004, he could not produce any voter list to show his name.

10. As noted above the writ petition has been filed after long 8 years of the aforesaid two orders of the Tribunal without explaining the delay. Delay itself defeats the cause of action, even if any.

11. For all the aforesaid reason the writ petition is dismissed. There shall be no order as to costs.

12. Let copies of this judgment be sent to SP(B), Barpeta and the Deputy Commissioner, Barpeta for taking further course of action towards detention of the petitioners in the detention camp for his deportation to his country in origin and for deletion of his 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. Let copies of this judgment and order be also furnished to Mr. M. Bhagabati, learned CGC and Mrs. B. Dutta, learned State Counsel, for their necessary follow up action. Let the LCR be sent down the Tribunal below immediately along with the copy of this judgment and order.