

(2012) 06 GAU CK 0049

Gauhati High Court

Case No: Writ Appeal No. 145 of 2012

Md. Abdul Rahim

APPELLANT

Vs

The Union of India and The State
of Assam

RESPONDENT

Date of Decision: June 7, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: AIR 2012 Guw 153

Hon'ble Judges: Indira Shah, J; Amitava Roy, J

Bench: Division Bench

Advocate: S. Chouhan, Mr. A.R. Shome and Mr. Sekhar Chauhan, for the Appellant; M. Bhagawati, ASGI and Mr. PS Deka, Govt. Advocate, Assam, for the Respondent

Final Decision: Dismissed

Judgement

Amitava Roy, J.

The writ appellant/writ petitioner having failed in his endeavour to upturn the determination made by the learned Foreigners Tribunal (2nd) Morigaon, in FT(D) Case No. 19/2008 adjudging him to be an illegal migrant, who have entered into India (Assam) from Bangladesh after 25.03.1971, he is in appeal against the judgment and order dated 20.03.2012, rendered by a Single Bench of this Court in WP(C) No. 4601/2011. We have heard Mr. S. Chouhan, learned counsel for the appellant and Mr. M Bhagawati, learned counsel appearing for the respondent No. 1, Union of India. Also heard Mr. PS Deka, learned State Counsel, Assam.

2. On the basis of a reference made by the jurisdictional verification officer following an investigation, as claimed by him, in the year 1997 in the village Sahariapam of the writ petitioner/writ appellant arousing a suspicion that he is an illegal migrant from Bangladesh entering the borders of India after 25.03.1971, the aforementioned case was registered, eventually, with the Foreigners Tribunal (2nd) Morigaon, Assam (for

short hereafter referred to as the Tribunal). On receipt of the notice, the writ appellant/writ petitioner appeared in the case and submitted his written statement claiming himself to be a citizen of India by birth. He asserted as well that his father had cast vote in the Assembly Elections of the State held in the years 1965 & 1970. Both sides, thereafter, adduced evidence. The writ appellant/writ petitioner in course of his testimony, proved, amongst others, a certificate issued by the village Headman and the In-charge President of Lengribori Gaon Panchayat to the effect that he belonged to the Sahariapam village. He proved, as well a school certificate issued by the Sahariapam M.V. School and copies of voter lists containing the name of his father Abdul Barek. The learned Tribunal, as aforesaid, on a scrutiny of the pleadings and the evidence on record, however, declared him to an illegal migrant, who had entered into India (Assam) from Bangladesh after 25.03.1971.

The writ appellant/writ petitioner then instituted a proceeding under Article 226 of the Constitution of India before this Court, which was registered as WP(C) No. 4601/2011 reiterating the same contentions. He averred, as well that on the advice of his conducting counsel, he did not produce several other documents i.e. copies of sale deeds, patta (kacha/kheraj), jamabandi as well as the voter lists for the years, 1989, 1993 and 1997 enlisting his name and this unintentional omission on his part resulted in denial of fair trial.

3. The respondent No. 3, Superintendent of Police, Border, Morigaon, by way of an affidavit filed through the Deputy Superintendent of Police, Morigaon, pleaded in substance that in course of the investigation for the purpose of extensive revision of the voters list of 1997, the writ appellant/writ petitioner could not produce any valid document in support of his claim of Indian nationality and that accordingly a case was registered against him suspecting him to be an illegal migrant.

4. The answering respondent endorsed the findings of the learned Tribunal and dismissed the documents sought to be introduced afresh by the writ appellant/writ petitioner as inconsequential.

5. The learned Single Judge, on an analysis of the pleadings and the documents available on record, observed that the writ petitioner/writ appellant had submitted his written statement after availing several opportunities to do so and that his pleadings carried five documents enumerated hereinbelow: -

(i) Exht. "Ka" certificate purportedly issued by Govt. Gaon Burha of Sahariapam Village certifying the petitioner to have been residing in the said village.

(ii) Exht. "Kha" certificate purportedly issued by the particular Panchayat to the same effect.

(iii) Exht. "Ga" transfer certificate purportedly issued by the Headmistress of the particular MV School certifying that the petitioner was a student of Class-VII in the school and his date of birth is 03.02.1972.

(iv) Certified copy of the voter list (extract only) of 1970 containing the name of one Abdul Barek.

(v) Certified copy of the voter list (extract only) of 1955 containing the name of one Abdul Barek.

6. These documents, on which the writ appellant/writ petitioner had founded his claim of Indian nationality, have been rejected by the learned Single Judge on the following grounds: -

i) The certificates issued by the Gaon Bura and the jurisdictional panchayat were only to the effect that he was residing in the village Sahariapam and nothing further.

ii) The transfer certificate by the Sahariapam M.V. School had been issued 25 years after the writ appellant/writ petitioner had left the school.

iii) The voter lists of 1965 and 1970 as such do not establish any link with the writ appellant/writ petitioner.

iv) The age of Abdul Barek claimed to be his father had been shown to be 45 years and 50 years in 1955 and 1970 respectively.

The learned Single Judge was also of the view that these documents had not been proved in accordance with law and that there was no explanation forthcoming as to why the name of the writ petitioner did not figure in any other voters list or document.

7. Mr. Chouhan has urged with reference to the additional documents sought to be introduced by the writ appellant/writ petitioner that he having been deluded by the conducting counsel in withholding these documents in the proceedings before the Tribunal, in the interest of fair trial, an opportunity ought to be now granted to him to do so. As this aspect of the matter has not been considered at all by the learned Single Judge, the learned counsel has urged that it is a fit case where the impugned judgments and orders be interfered with and the matter be remitted to the learned Tribunal for a fresh disposal on merits by allowing the writ appellant to prove and exhibit the additional documents.

8. The learned counsel for the respondents in unison resisted this prayer contending that the writ appellant/writ petitioner having been failed, inspite of several opportunities granted to him, to adduce all evidence oral and documentary at his disposal in the face of concurrent findings on the recorded facts after a full fledged trial adjudging him to be an illegal migrant, the leave, as sought for, ought not to be granted.

9. Upon hearing the learned counsel for the parties and on a consideration of the materials on record, we feel inclined to sustain the plea raised on behalf of the respondents. Not only, the deductions made by the learned Tribunal and the learned Single Judge recited hereinabove and based on the pleaded facts and the

documents are as plausible, it is, per se, obvious that the writ appellant/writ petitioner had been afforded due opportunity before the learned Tribunal to produce, amongst others, all documents at his disposal to prove his case. The plea that though willing, on the advise of his conducting counsel he could not produce, before the learned Tribunal, the documents, now sought to be relied upon, we are not persuaded to accept the same. Apart therefrom, in the voter lists for the years 1989, 1993 and 1997 where, according to the writ appellant/writ petitioner, his name appears, his age has been reflected therein to be 20 years (1989), 20 years (1993) and 40 years (1997). The name of his father has been shown in all these voter lists to be Barek, though, according to him, it is late Abdul Barek @ Baru Seikh. Therefore, these voter lists ipso facto do not advance the case of the writ appellant/writ petitioner. In the above view of the matter, we are of the opinion that a fresh opportunity to him to prove the additional documents is not warranted in the facts and circumstances of the case, lest, it be an abuse of the process of Court. To reiterate, the reasonings and the findings of the learned Tribunal and the learned Single Judge commend for acceptance and sitting in appeal, no interference therewith is called for. This appeal, therefore, lacks in merit and is dismissed. No costs.