

(2010) 02 GAU CK 0038

Gauhati High Court

Case No: W.P (C) No. 4756 of 2009

Md. Jamal Ali

APPELLANT

Vs

State of Assam and Another

RESPONDENT

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**Date of Decision:** Feb. 25, 2010**Acts Referred:**

- Foreigners Act, 1946 - Section 9

**Citation:** (2010) 2 GLD 753**Hon'ble Judges:** Biplab Kumar Sharma, J**Bench:** Single Bench**Advocate:** B.K. Das, for the Appellant; R. Chakraborty, Additional Senior Government Advocate and P. Das, CGSC, for the Respondent**Final Decision:** Dismissed

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### Judgement

B.K. Sharma, J.

The petitioner claiming himself to be an Indian citizen by birth has invoked the writ jurisdiction of this Court assailing the legality and/or validity of the order dated 2.7.2008 passed by the Foreigners' Tribunal, Kamrup (Rural), Assam. In GFT (R) Case No. 252/2007, by the said order the petitioner has been declared to be a "foreigner". The order has been passed by way of answer to the reference made to the learned Tribunal as to whether the petitioner is an illegal Bangladeshi migrant, who entered into India without any valid document through unauthorised route after the cut off date i.e. 25.3.1971.

2. The petitioner, in spite of receipt of notice from the learned Tribunal did not respond to the proceeding and thus, the impugned order dated 2.7.2008 is the result of an ex parte proceeding against the petitioner in the said reference case.

3. In the writ petition, it is the case of the petitioner that although, in the impugned order there is a reference of the Inquiry Officer visiting the place of the petitioner and meeting him but in fact no such Inquiry Officer had ever met him. It is the

further case of the petitioner that the said Inquiry Officer never questioned him nor any notice was received by him.

4. In paragraph 11 of the writ petition, the petitioner has stated that as an Indian citizen he has every right to be heard for deciding such an important issue and that the learned Tribunal should not have passed such reckless order. In Paragraph-12 it has been stated that re-scrutiny of the documents are needed giving a chance to the petitioner to be heard from the proper stage.

5. I have heard Mr. B.K. Das, learned Counsel for the petitioner as well as Ms. R. Chakraborty, learned Additional Sr. Govt. Advocate. I have also examined the records received from the learned Tribunal.

6. Although during the course of hearing Mr. B.K. Das, learned Counsel for the petitioner submitted that the petitioner was not served with any notice from the Tribunal but on being asked as to on what basis such a submission was made, the learned Counsel could not pinpoint anything. He only referred to the vague and indefinite statements made in aforementioned paragraphs 10, 11 and 12 of the writ petition. For a ready reference the statements made in paragraphs 10, 11 and 12 of the writ petition are quoted below:

10. That the petitioner begs to state that he has never been questioned by any enquiry officer or he has received any notice; the order has been passed only on the Enquiry Officer, who actually never met the petitioner.

11. That the petitioner begs to submit that as citizen of India he has every right to be heard for deciding such an issue. The learned Member of Foreigners" learned Tribunal should have not passed such reckless order; where there is a prime question of nationality of the petitioner is arises.

12. That the petitioner begs to submit that rescrutinised the documents are needed given a chance to the petitioner to be heard in proper stages vacating the order passed in GFT (R) Case No. 252/2007.

7. From the above statement it cannot be said to be a case of non-receipt of Notice from the Tribunal. What could be gathered from the aforesaid statement is that the particular Enquiry Officer did not meet and examined the petitioner. Had it been a case of non-receipt of Notice from the learned Tribunal, there would have been a categorical statement to that affect. The fact that the petitioner has taken recourse to falsehood is amply demonstrated by the records of the learned Tribunal.

8. The petitioner was duly examined by the Enquiry Officer and he (the petitioner) in his statement before the Enquiry Officer categorically stated about his failure to submit any document to prove his Indian citizenship. In the said statement he undertook to submit necessary documents within 15 days, which he failed to do. Along with the petitioner, the statement of one Md. Khasnur Ali was also recorded, who like that of the petitioner could not state anything about the petitioner

although, in his statement he had stated that he knew all the villagers of the particular village.

9. From the above, it will be seen that the statement of the petitioner that the Inquiry Officer never met him and/or examined him is nothing but making a false statement before the Writ Court on oath. As regards the service of notice from the learned Tribunal, upon verification of the records of the Tribunal, what I find is that the petitioner was duly served with Notice and received the same on 28.3.2008 in presence of 2 witnesses, namely Sri Umesh Ch. Bora and Sri Kamala Thakuria.

10. Thus, the argument made by the learned Counsel for the petitioner that the petitioner did not receive notice from the learned Tribunal is also not true. The petitioner having taken recourse to falsehood invoking the writ jurisdiction, on this ground alone the writ petition is liable to be dismissed.

11. The learned Tribunal had registered the case against the petitioner on receipt of the reference from the Superintendent of Police (B) Kamrup, Guwahati and issued Notice to the opposite party fixing the matter on 25.4.2008. Although, notice was duly served on the petitioner he did not appear on 25.4.2008 and thereafter, also on all subsequent dates which naturally resulted in the impugned ex parte order.

12. For the State, the reference has been established by examining the Inquiry Officer who dully proved the report furnished by him. The petitioner having not discharged his burden of proof as required u/s 9 of the Foreigners" Act, 1946, there was no option left for the learned Tribunal but to proceed ex parte against him and answer the reference on the basis of the evidence adduced by the State.

13. In view of the above, there is no merit in the writ petition and accordingly, it is dismissed. The Superintendent of Police (B), Kamrup, Guwahati is directed to detain the petitioner either in judicial custody or in the Detention Camp till such time he is deported to Bangladesh. The Deputy Commissioner, Kamrup (R) shall also ensure deletion of the name of the petitioner from the Electoral Rolls, if any. Both the authorities shall furnish compliance reports on or before 31.3.2010.

14. The Registry shall list the matter again on 31.3.2010 for verification of compliance reports.

15. Before parting with the case records a disturbing factor is felt to be noted. By Annexure-2 Notice dated 23.7.2009, the Circle Officer, Choigaon Revenue Circle and Electoral Registration Officer, 49 Chaygaon LA Constituency asked the petitioner to submit his reply as to why, his name should not be deleted from the Electoral Roll. It is not understood as to what was the necessity to issue such a notice giving another opportunity to the petitioner. Once the petitioner was declared to be a "foreigner" by the impugned order dated 2.7.2008 there was no necessity to issue such notice to the petitioner and his name ought to have been deleted immediately. Thus, here is a case of providing all sorts of misplaced opportunities to an illegal migrant. It

also took more than one year to issue such Notice to the petitioner and in the process he might have participated in election(s) as voter.

16. The petitioner was not at all perturbed by the impugned ex parte order dated 2.7.2008 as the respondents did not take any follow-up action to apprehend him for the purpose of deportation. The petitioner invoked the writ jurisdiction only on 29.10.2009 i.e. after 14 months of the impugned order. Thus, this 14 months was enough for the Police Administration to apprehend the petitioner. He could remain in India even after the declaration made by the learned Tribunal by its aforesaid order dated 2.7.2008. This is the manner and method in which the State Administration wants to deal with lakhs of foreigners freely moving in the fertile land of Assam.

17. The Director General of Police, Assam shall take note of the above situation, which is really alarming and shall ensure that there is no recurrence of such laxity in future. Once the learned Tribunal declares a person to be a "foreigner" he/she should be immediately taken into custody for deportation.

18. Registry is directed to furnish copies of this judgment and order to the Director General of Police, Government of Assam; SP (B), Kamrup (R) and DC, Kamrup.

18. Registry is directed to furnish copies of this judgment and order to the Director General of Police, Government of Assam; SP(B), Kamrup (R) and DC, Kamrup.

19. Another copy shall also be sent to the Union of India in the Ministry of Home Affairs. In addition, another copy shall also be furnished to Ms. R. Chakraborty, learned Additional Sr. Government Advocate for her necessary follow up action.

20. As directed above, the matter shall be listed on 31.3.2010 for perusal of compliance reports from the Superintendent of Police (B), Kamrup (R), Guwahati and Deputy Commissioner, Kamrup (R), Assam.