

WP(C) 4955/2009
BEFORE
THE HON'BLE MR.JUSTICE I.A. ANSARI

By an ex parte order, dated 07.01.2009, passed, in FT (C) Case No.849/2006, by the learned Foreigners Tribunal, Morigaon, the petitioners have been declared as foreigners and following the order, dated 07.01.2009, an order, dated 06.06.2009, has been passed by the Superintendent of Police, Morigaon, requiring the petitioners to leave India.

However, the case of the petitioners is, in brief, thus: The petitioner No.1's father's name had appeared in the voter list of the year 1965 and his father's name had also appeared in land document, dated 27.05.1951, within the district of Nagaon and Morigaon. Petitioner No.2 is wife of petitioner No.1 and petitioners Nos.3 to 10 are sons and daughters of petitioner Nos.1 and 2. Petitioner No.1's name had appeared in voter list of the year 1975 under 79 No. Jagiroad (SC) LAC in Serial No.24, House No.4 (Ka), Part No.122 of village Barkhal, Mouza Uttarkhal, P.S. Jagiroad, Dist. Nagaon.

The petitioners contend that Superintendent of Police, Morigaon, brought an allegation against the petitioners that they are foreign nationals and, accordingly, FT (C) Case No.849/2006 was registered and a notice was issued to the petitioner No.1 to appear, on behalf of the petitioners, before the learned Tribunal to adduce documents in support of their nationality. After receiving the said notice, the petitioner engaged an advocate of Morigaon Court and submitted to him all the necessary documents, but the engaged advocate of the petitioners did not handle the case properly. As a result thereof, the petitioners were declared foreigners by the Tribunal. It is the order, dated 07.01.2009, aforementioned, whereby petitioners have been declared as foreigners, which stands challenged in the present writ petition, made under Article 226 of the Constitution of India, by the petitioners.

I have heard Mr. M.U. Mahmud, learned counsel, for the petitioners, and Mr. M. Bhagawati, learned CGC.

There is no dispute before this Court that in the case of State of Assam and others Vs. Moslem Mondal and others, reported in (2013) GLT (FB) 809, a Full Bench of this Court has laid down the course of action, which a person may take, if he is declared as a foreigner by an ex parte order passed by a Foreigners Tribunal and it has been indicated therein by the Full Bench that the aggrieved person may make an application in the Foreigners Tribunal, which has passed the ex parte order, seeking to get the ex parte order set aside. The relevant observations, made at para 92, in Moslem Mondal (supra), read as under:

92. As discussed above, the Tribunals constituted under the Foreigners Act read with the 1964 order have to regulate their own procedure and they have also the quasi-judicial function to discharge and hence in a given case the Tribunal has jurisdiction to entertain and pass necessary order on an application to set aside an ex parte opinion, provided it is proved to the satisfaction of the Tribunal that the proceedee was not served with the notice in the reference proceeding or that he was prevented by sufficient cause from appearing in the proceeding, reason for which was beyond his control. Such application, however, should not be entertained in a routine manner. The Tribunal can entertain such application provided the proceedee could demonstrate the existence of the special/exceptional circumstances to entertain the same by way of pleadings in the application filed for setting aside the ex parte opinion, otherwise the very purpose of enacting the 1946 Act and the 1964 order would be frustrated. The Tribunal, therefore, would have the jurisdiction to reject such application at the threshold, if no ground is made out.

It is submitted, on behalf of the petitioners, that the petitioners seek to withdraw this writ petition with liberty to make appropriate application,

in the learned Foreigners Tribunal, seeking to get set aside the impugned ex parte order, dated 07.01.2009, with liberty to approach this Court with appropriate application, in future, if so advised, and that the petitioners would also make an application seeking stay of the ex parte order, dated 07.01.2009, until the time the Court takes a decision on the application, which the petitioners propose to make to get the said ex parte order set aside, and all such consequential proceedings as may entail. To the submissions, so made, no objection has been raised on behalf of the respondents.

Considering, therefore, the matter in its entirety and in the interest of justice, this writ petition is disposed of as withdrawn leaving the petitioners with option to make an application, in the learned Tribunal, for the purpose of getting the ex parte order, dated 07.01.2009, set aside. This apart, petitioner may also apply for stay of the ex parte order, dated 07.01.2009, and, if such an application is made, the learned Tribunal shall make necessary order so that the petitioners' application, seeking to get set aside the ex parte order, dated 07.01.2009, shall not become infructuous or redundant.

This Court also grants to the petitioners the liberty to approach this Court with appropriate application, in future, if so advised.

With the above observations and directions, this writ petition shall stand disposed of.

No order as to costs.