

WP(C) 8020/2015

BEFORE

HON'BLE MR. JUSTICE UJJAL BHUYAN

HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

Heard Mr. H. A. Sarkar, learned counsel for the petitioner and Mr. M. Bhagawati, learned Govt. Advocate, Assam.

This petition has been filed under Article 226 of the Constitution of India challenging the legality and validity of the order dated 29.10.2015 passed by the learned Member, Foreigners Tribunal, Chirang opining that petitioner is a foreigner of post 25.03.1971 stream and ordering his detention and subsequent deportation.

Case of the petitioner is that he was born in the year 1957 in Bilaspur village under Sidli Police Station in the then undivided Goalpara district. In the year 1975 he shifted to his present address at village Nichinapara under Basugaon Police Station in the district of Chirang.

A reference was made by the Border Police of Dhubri district to the then Foreigners Tribunal, Dhubri stating that in the course of enquiry petitioner was found to be a foreigner of 1966-71 stream. Accordingly, reference was made for judicial opinion.

Case was transferred from Foreigners Tribunal, Dhubri to Foreigners Tribunal, Bongaigaon on 22.05.2015. On transfer, notice was issued to the petitioner and on receipt of notice petitioner appeared and contested the reference by filing written statement. After perusal of the written statement and the documents submitted by the petitioner in support of his case that he was a citizen of India and not a foreigner, learned Member, Foreigners Tribunal took the view that petitioner had failed to establish his linkage with his father and also failed to prove the true identity of his projected father. As the petitioner had failed to discharge the burden which was on him the reference was answered in the affirmative.

Learned counsel for the petitioner submits that though in the reference the allegation was that petitioner was a foreigner of 1966-71 stream, the Tribunal committed a manifest error by declaring the petitioner to be a foreigner of post 1971 stream. He also submits that Sachindra Barman and Sachindra Roy is the one and the same person and he is the father of the petitioner. Further an identical proceeding was also conducted against his brother Sri Khetra Mohan Barman which was answered by the Foreigners Tribunal, Bongaigaon on 22.05.2015 opining that he is not a foreigner. In that view of the matter impugned order of Tribunal is wholly unsustainable and should be interfered with.

On the other hand, Mr. Bhagawati, learned State Counsel submits that there is no infirmity in the order of the Tribunal. No evidence could be adduced by the petitioner in support of his contention that he is an Indian citizen. Since learned Tribunal was not satisfied with the evidence adduced on behalf of the petitioner, it had rightly come to the conclusion that petitioner, had failed to discharge the burden which was on him.

Submissions made by learned counsel for the parties have received the due consideration of the Court.

For better appreciation of the rival contentions, relevant portion of the order dated 29.10.2015 is extracted hereunder:-

My findings & Opinion:-

Ext. 1 & Ext. 8 are the two vital documents with which the OP has tried to establish his linkage by projecting a person named Panchanan Roy S/o Manik in Ext. 1 and Panchanan Barman S/o Lt. Baidyanath Barman in Ext. 8, the Ext. 1 being the voter list of 1966 and the Ext. 8 being the registered sale Deed executed on 26.04.1965.

However, Ext. 1 & the Ext. 8 are the 2 documents which are contradictory to each other, so far as the true identity of the projected father of the OP is concerned.

ed as projected father of the OP is Panchanan Roy, S/o Manik in Ext. 1 and Panchanan Barman S/o Lt. Baidyanath Barman in Ext. 8 which has already been stated above.

Ext. 2 raises serious question as to why none of the recorded voters in Ext. 1 who were supposed to be shown, as clarified with Ext. A later, not recorded as voter in Ext. 2 which is the voter list of 1979, for the first time recording the name of the OP alongwith 6 others of household members of his projected father's family?

As the true identity of the projected father of the OP has not been established, the Exts.-3, 4, 5, 6, 7 & 8 do not help any way to support the claim of the OP for Indian citizenship.

The instant case is an example of how the eleven illegal migrants from the neighboring country enter into Indian territory, settle down in the state of gullible people, called Assam, discover someone on record, establish linkage, record their names as voters, clandestinely become citizens of the country and enjoy all the rights and privileges of a citizen including rights over land, special family status and what not?

In my reasoned opinion, therefore, the OP has failed to prove the true identity of his projected father leave along establishing link (with his projected father).

The OP alongwith his other family members, for the first time appear on record in India/Assam in the voter list of 1979. Besides, the OP, the other persons recorded in Ext.2, particularly against Sl. Nos. 37, 39 and 41 who are brothers of the OP are also suspected foreigners. However as the Reference is made against the OP only, I am concentrating on the Reference against the OP only.

The Reference is to be answered under Foreigners Act 1946, Under Section 9 of the Act, the burden to prove his Indian citizenship is on the OP. OP has failed to discharge the duty requiring me to answer the Reference accordingly.

Reference is answered in affirmative. OP is a foreigner of post 25 March 1971 stream.

O R D E R

Detain and deport the detected foreigner to the specified territory.
Give copy of the order to the detected foreigner.

In the documents filed by the petitioner, petitioner's father is shown as Panchanan Roy, son of Manik and sometimes as Panchanan Barman, son of Baidyanath Barman. Petitioner has tried to explain this apparent dichotomy by filing an affidavit in the year 2014 stating that Panchanan Roy and Panchanan Barman is one and the same person. However, having regard to different fathers, it is not possible to accept Panchanan Roy and Panchanan Barman as the one and same person. Moreover, at no point of time petitioner ever disclosed his name as Sachindra Roy but all throughout as Sachindra Barman. In such circumstances, a serious discrepancy arose as to the identity of the petitioner's father. On the face of such discrepancies, learned Member, Foreigners Tribunal took the view that petitioner had failed to prove the true identity of his father as he was not satisfied with the evidence adduced by the petitioner. On this count, no fault can be found with the view taken by the learned Member, Foreigners Tribunal.

In so far the decision of the Foreigners Tribunal in the case of petitioner's brother is concerned, that was a decision rendered on 22.05.2015 whereas decision in this case was rendered more than 5 months thereafter on 29.10.2015. Petitioner did not produce copy of this decision before the Tribunal. Therefore, petitioner cannot now assail the findings of the Tribunal as being in conflict with the

decision dated 22.05.2015. In any case legality and correctness of the order dated 22.05.2015 in the case of petitioner's brother is not before the Court for its scrutiny. Therefore, no reliance can be placed on this document by the petitioner.

However, having said that we notice that learned Member, Foreigners Tribunal has opined that petitioner is a foreigner of post 25.03.1971 stream whereas the reference made to the Foreigners' Tribunal was that petitioner is a foreigner of the 1966-71 stream. To that extent, order of the Tribunal would require modification.

Having regard to the above, while not interfering with the substantive portion of the order of the learned Member, Foreigners Tribunal, we deem it fit and proper to modify that portion of the order of the learned Member, Foreigners Tribunal whereby petitioner has been declared to be a foreigner of post 1971 stream. Accordingly, the reference would be deemed to have been answered in the affirmative i.e. petitioner is a foreigner belonging to the 1966-71 stream.

Subject to the modification as above, writ petition is dismissed.

At this stage, Mr. Sarkar, learned counsel for the petitioner submits that following the order of the Foreigners Tribunal petitioner has been kept in detention since 29.10.2015. Therefore, direction may be issued to release him from the detention camp.

Mr. Bhagawati submits that Superintendent of Police (Border), Chirang may be directed to look into this aspect and to take necessary steps as per law.

On due consideration, we direct the SP (Border), Chirang to take a decision regarding release of the petitioner within 15 (fifteen) days from the date of receipt of a certified copy of this order so that petitioner can comply with the legal formalities required of a person declared to be a foreigner belonging to the 1966-71 stream, failing which legal consequences would follow.