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Court : Guwahati

Decided On : Nov-23-2015

Judge : B.K. Sharma & Paran Kumar Phukan

Appeal No. : WP (C) No. 3502 of 2012

Appellant : Abiran Bibi

Respondent : The State of Assam represented by the Commissioner and Secretary, Department of Home, Guwahati and Others

Advocate for Pet/Ap. : Mr. I. Alam

Judgement :

Order (Oral)

B.K. Sharma, J.

1. This writ petition is directed against the order dated 08/06/2012 of the learned Member, Foreigners Tribunal No. 1, Dhubri (Assam) passed in FT Case No. 1021/GPR/08 (Ref. Case No. R/IMDT/1866/98) (State of Assam Vs. Musstt. Abiran Bibi). By the said order, the learned Tribunal, appreciating the evidence on record has declared the petitioner to be a foreigner of post 25/03/1971.

2. We have heard Mr. I. Alam, learned counsel for the petitioner. Also heard Mr. M. Bhagabati, learned State Counsel and so also Ms. G. Sarma, learned counsel representing the Union of India. We have also gone through the entire materials in record including the records received from the Tribunal.

3. As discussed in the impugned judgment and order, there are lot of discrepancies in the contentions raised by the petitioner before the Tribunal to prove that she is not a foreigner. In one place of the written statement, she claimed her grandfather to be one Jahaddi Sk son of Rahman and that of her grandmother as Rekatun Bibi wife of Rehman, although it should have been Jahaddi Sk. According to the petitioner, their names were included in the NRC of 1951. However, in para 5 and 6 of the same very written statement, the petitioner identified her grand-fathers Mohiruddin son of Abdur Rehman and her grandmother as Moziron Nessa wife of Mohiruddin.

4. From the documents annexed to the writ petition including the purported NRC and the voter list of 1966 and 1977, which are full of contradictions. In the purported NRC, the name of the purported grandfather of the petitioner i.e. Mohiruddin was not be found. Although as recorded in the impugned order, he was about 30 years of age as on 1951. His name should have appeared along with Jahaddi in the NRC of 1951.

5. The petitioner has projected her father as Md. Nayab Ali son of Mohiruddin, however, no linkage could be established with Nayab as the son of Mohiruddin or conversely Mohiruddin s son is Nayab Ali.

6. The learned Tribunal has discussed the entire evidence on record with categorical findings on the basis of the said evidence. It will be appropriate to re-arrange and reproduce the said findings below :-

(1) In para 4 of her written statement, the OP has stated that the names of her paternal grandfather Jahaddi Sk s/o Rahman and her grandmother Rekatun Bibi w/o Rahman (it should be Jahaddi Sk) along with the names of other family members were recorded in the NRC of 1951 at village Kalapakanichar under Dhubri P.S., whereas in para 5 and para 6 of the same written statement she has

stated that the names of her grandfather Mohiruddin Sk s/o Abdul Rahman and her grandmother Mozirun Nessa w/o. Mohiruddin along with other family members are recorded in the voters lists of 1966 and 1970 at village Chalakura Payestirchar under South Salmara LAC. This appears to be a quite contradictory statement given by the OP because two different persons cannot be the grandfather of the OP and two different persons can also not be the grandmother of the OP. The name of her grandfather may be either Jahaddi Sk s/o. Rahman or Mohiruddin s/o. Abdur/Abdul Rahman. Likewise the name of her grandmother may either be Rekatun Bibi w/o. Jahaddi Sk or Mozirun Nessa w/o. Mohiruddin.

(2) The OP has annexed the copy of NRC and the voters list of 1966 and 1977 with the written statement as Annexure C, Annexure D and Annexure e. On perusal of Annexure C (copy of NRC of 1951) to the written statement, it is found that the name of one Jabaddi Sk S/o. Rahman, Rekatun Bibi w/o Jabaddi Sk and the names of their children are mentioned in it. There is no mention of the name of Mohiruddin in Annexure C. In Annexure D and Annexure E, the names of Mohiruddin Sk s/o. Abdul Rahman, Muzirun Nessa Bibi w/o Mohiruddin, Jobadi Sk s/o. Abdur Rahman and others are mentioned. In Annexure D, the age of Mohiruddin is shown as 45 years and the age of Jobadi Sk is shown as 60 years in 1966. If in 1966 the age of Mohiruddin was 45 years, it can well be presumed that he was of about 30 years of age in the year 1951 but surprisingly his name is missing in the NRC of 1951. It may also be presumed that Mohiruddin and Jabaddi (or Joabdi as it appears in Annexure D and Annexure E) are brothers, both being sons of Abdur Rahman or Rahman. If that be so, even then the name of Mohiruddin should have appeared along with Jabaddi in the NRC OF 1951.

(3) During her examination on oath, the OP exhibited the Voters lists of 1966 and 1970 as Ex.1 and Ex. 2 respectively. She has also exhibited one school certificate (Ex.5) issued by the Head Master, Amguri Kharballi ME Madrassa, P.O. Kalgachia in the district of Barpeta. In the said certificate it is certified that Miss Obiran Nessa (the OP) daughter of Md. Nayab Ali an inhabitant of village Sutirpathar, P.O. Kalgachia, P.S Sarbhog, Dist- Barpeta, Assam, left the Amguri Kharballi ME Madrassa on 31/12/1995 and that her date of birth is 01.01.1983. There is no document or reliable evidence on record to show that Nayab Ali (father of the OP)

is the son of Mohiruddin whose name appears in the voters list of 1966 and 1970. The OP annexed two linkage certificates with her written statement as Annexure A and Annexure A(1). Annexure A is issued by the President of 55 No. Kalgachia Gaon Panchayat and Annexure A(1) is issued by Gaonbura of village Kharballi, Sutirpathar, Amguri, Barpeta. From the said two linkage certificates also it only appears that the OP is the daughter of Md. Nayab Ali but there is nothing to show that Md. Nayab Ali is the son of Mohiruddin. In this regard, there is only one document on record and that is the voters list of 1985 (Ex.3) where one Nayab Ali is shown as son of Mohiruddin. In Ex.3, the age of Nayab Ali is shown as 36 years. If that be so, then said Nayab Ali should have born in the year 1949 when the age of his father Mohiruddin, as per calculation made on the basis of the age shown in Ex.1 (voters list of 1966), was only 17 years. Further, had Md. Nayab Ali, father of the OP, been born in 1949, his name should have appeared in the voters list of 1970 or thereafter in any of the voters lists prior to 1985 but Ex. 3 is the only document on record which shows that his name first appeared in the voters list of 1985.

(4) The OP has stated that her father purchased landed property vide a registered sale deed (Ex. 6) but it is found that the property was purchased only in the year 2002 and there is nothing on record to show that the father or for that matter the so called grandfather of the OP had landed property either in the district of Barpeta or Dhubri or any other place in Assam prior to 1971. In Ex. 3, the extract copy of the voters list of 1985, there is the only name of the father of the OP and there is no name of any of his other family members.

(5) Whatever be the case as it may, the fact remains that there is no cogent evidence on record to show that Mohiruddin Sk whose name appears in the voters lists of 1966 and 1970 is the grandfather of the OP or that the father of the OP Md. Nayab Ali is the son of aforesaid Mohiruddin. No satisfactory explanation has been given by the OP as to why the name of her father did not appear in any of the voters lists prior to 1985 or as to why the name of Mohiruddin also did not appear in the NRC of 1951 along with the name of Jabaddi Sk, if Mohiruddin was really the brother of Jabaddi or son of Rahman or Abdur Rahman and that too when he was about 19 years of age in 1951. If Nayab Ali was born in 1949 as per voters list

of 1985 (Ex.3), his name should also have appeared along with the name of Jabaddi Sk and Mohiruddin in the NRC of 1951. But the name of both Mohiruddin and Nayab Ali are missing in the NRC of 1951 whereas the names of his /their other so called relatives are recorded there in the NRC.

(6) The only conclusion that can be drawn in this case is that the OP could not establish her linkage with Mohiruddin whose name appears in the voters lists of 1966 and 1970 and also she failed to produce any reliable evidence to show that Nayab Ali is the son of aforesaid Mohiruddin. The evidence of OP, being contradictory in nature, is found to be not trustworthy as already discussed above. In absence of any reliable and cogent evidence on record, it cannot be said for certain that aforesaid Nayab Ali son of Mohiruddin, stated to be the father of the OP, was a genuine citizen of India and had entered the territory of India in between 01.01.1966 and 25.03.1971.

(7) Considering the entire material on record and the discussion above, I am of the considered view that the OP has miserably failed to discharge her burden of prove that she acquired citizenship of India by birth through genuine Indian parents. Rather it appears that the OP entered India without authority subsequent to 25.03.1971 and hence she is termed to be an illegal migrant.

7. The learned Tribunal having returned the above findings appreciating the evidence on record, this Court exercising writ jurisdiction cannot re-appreciate the evidence like an appellate authority. The scope, ambit and jurisdiction of the writ Court has been well defined about which discussions have been made in State of Assam Vs. Moslem Mondal and others reported in 2013 (1) GLT 809. For a ready reference, para 112 and 113 of the said Full Bench decision is quoted below :-

112. Article 226 of the Constitution confers on the High Court power to issue appropriate writ to any person or authority within its territorial jurisdiction. The Tribunal constituted under the 1946 Act read with the 1964 Order, as noticed above, is required to discharge the quasi-judicial function. The High Court, therefore, has the power under Article 226 of the Constitution to issue writ of certiorari quashing the decision of the Tribunal in an appropriate case. The scope of interference with the Tribunal's order, in exercise of the jurisdiction under Article

226, however, is limited. The writ of certiorari can be issued for correcting errors of jurisdiction, as and when the inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it or if such Court or Tribunal acts illegally in exercise of its undoubted jurisdiction, or when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. The certiorari jurisdiction of the writ Court being supervisory and not appellate jurisdiction, the Court cannot review the findings of facts reached by the inferior Court or Tribunal. There is, however, an exception to the said general proposition, in as much as, the writ of certiorari can be issued and the decision of a Tribunal on a finding of fact can be interfered with, if in recording such a finding the Tribunal has acted on evidence which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all, because in such cases such error would amount to an error of law apparent on the face of the record. The other errors of fact, however grave it may be, cannot be corrected by a writ court. As noticed above, the judicial review of the order passed by the inferior Court or the Tribunal, in exercise of the jurisdiction under Article 226 of the Constitution, is limited to correction of errors apparent on the face of the record, which also takes within its fold a case where a statutory authority exercising its discretionary jurisdiction did not take into consideration a relevant fact or renders its decision on wholly irrelevant factors. Hence, the failure of taking into account the relevant facts or consideration of irrelevant factors, which has a bearing on the decision of the inferior court or the Tribunal, can be a ground for interference of the Court or Tribunal's decision in exercise of the writ jurisdiction by the High Court.

113. The Apex Court in *Sant Lal Gupta Vs. Modern Coop. Group Housing Society Ltd.* reported in (2010)13 SCC 336, reiterating the grounds on which a writ of certiorari can be issued, has opined that such a writ can be issued only when there is a failure of justice and cannot be issued merely because it may be legally permissible to do so. It is obligatory on the part of the petitioners to show that a jurisdictional error has been committed by the statutory authority. There must be an error apparent on the face of the record, as the High Court acts merely in a supervisory capacity and not as the appellate authority. An error apparent on the face of the records means an error which strikes one on mere looking and does

not need long drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matters to show its incorrectness. Such error may include giving reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant consideration into account and failing to take relevant consideration into account, and wrongful admission or exclusion of evidence as well as arriving at a conclusion without any supporting evidence. Such a writ can also be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to exercise the jurisdiction vested in him by law.

8. Above being the position, we do not find any merit in the writ petition and accordingly it is dismissed. Now, the Superintendent of Police (B), Dhubri shall ensure that the petitioner is arrested and detained in the detention camp till his deportation to his country of origin i.e. Bangladesh.

9. Let the matter be listed again after one month so as to submit report by the Superintendent of Police (B) Dhubri about the action taken in the terms of this order.

10. The Deputy Commissioner, Dhubri shall ensure deletion of the name of the petitioner from the voter list, if any.

11. Registry shall send down the case records to the learned court below along with a copy of this judgment and order. A copy of the judgment and order may also be furnished to Mr. M. Bhagabati, learned State Counsel for his immediate necessary follow up action. Copies shall also be sent to the SP(B), Dhubri and Deputy Commissioner, Dhubri, for their immediate follow up action.

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