

WA 70/2007

BEFORE

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE C.R.SARMA

Ranjan Gogoi, J

Heard Mr AM Mazumdar, learned senior counsel for the appellants (writ petitioners) in both the cases. Also heard Mr KN Choudhury, learned Addl. Advocate General, Assam who has appeared in the cases at the request of the Court.

2. In W.A. No. 70/2007, the appellant/ writ petitioner was declared to be an illegal migrant by the Illegal Migrants (Determination) Tribunal, Goalpara by judgment and order dated 9.11.2001. The said order was affirmed in appeal by the Appellate Tribunal by order dated 22.5.2003. The writ petition filed by the appellant i.e. WP(C) No. 5281/2003 was dismissed by a learned Single Judge by order dated 25.1.2007. Aggrieved, W.A. No. 70/2007 has been filed.

3. In W.A. No. 71/2007, the appellant/ writ petitioner was declared to be an illegal migrant by the Illegal Migrants (Determination) Tribunal, Goalpara by an order dated 18.10.2001. The appeal filed against the said order was dismissed by the Appellate Tribunal on 22.5.2003 and the writ petition filed by the appellant i.e. WP(C) No. 5280/2003 was also dismissed by a learned Single Judge of this Court on 25.1.2007. Aggrieved, W.A. No. 71/2007 has been filed.

4. In Sarbananda Sonowal -vs- Union of India & Ors., reported in AIR 2005 SC 2920, the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 has been struck down. Para 57 and 58 of the said judgment may be reproduced hereinbelow:

57. To sum up our conclusions, the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 are ultra vires the Constitution of India and are accordingly struck down. The Illegal Migrants (Determination by Tribunals) Rules, 1984 are also ultra vires and are struck down. As a result, the Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease of function. The Passport (Entry into India) Act, 1920, the Foreigners Act, 1946, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967 shall apply to the State of Assam. All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964. In view of the finding that the competent authority and the Screening Committee had no authority or jurisdiction to reject any proceedings initiated against any alleged illegal migrant, the orders of rejection passed by such authorities are declared to be void and nonest in the eye of law. It will be open to the authorities of the Central Government or State Government to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals constituted under Illegal Migrants (Determination by Tribunals) Act, 1983 by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever. The appeals pending before the Appellate Tribunals shall be deemed to have abated.

58. In view of the discussion made above, the writ petition succeeds and is allowed with the following directions:

(1) The provisions of Illegal Migrants (Determination by Tribunals) Act, 1983 and Illegal Migrants (Determination by Tribunals) Rules, 1984 are decl

ared to be ultra vires the Constitution of India and are struck down;

(2) The Tribunals and the Appellate Tribunals constituted under Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function.

(3) All cases pending before the Tribunals under Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.

(4) It will be open to the authorities to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.

(5) All appeals pending before the Appellate Tribunal shall be deemed to have abated.

(6) The respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of Foreigners who have illegally come from Bangladesh or are illegally residing in Assam. .

5. In view of the aforesaid judgment of the Apex Court the short question that arises before us is whether these appeals can be entertained by us for disposal on merits. The above question has already been answered by a learned Single Judge of this Court in Shanti Ranjan Dey & Ors. -vs- State of Assam & Ors., 2006 (4) GLT 716. A Division Bench of this Court in Karamat Ali -vs- State of Assam & Ors., reported in 2008 (1) GLT 947 has agreed with the view taken by the learned Single Judge in Shanti Ranjan Dey & Ors. (supra).

6. We have considered the view taken by the learned Single Judge in Shanti Ranjan Dey & Ors. (supra) as well as the view of the Division Bench in Karamat Ali (supra) and we are in complete agreement with the views expressed in the said decisions. Accordingly, we set aside the orders of the learned Tribunal, the learned Appellate Tribunal as well as the order of the learned Single Judge out of which these appeals have arisen and refer the matter to the Foreigners Tribunal at Goalpara for fresh disposal in accordance with the provisions of the Foreigners (Tribunals) Order, 1964 read with the Foreigners Act. Both the parties to the present proceedings, being represented, shall appear before the learned Tribunal on 31.8.2010 after which the learned Tribunal will register separate cases in respect of both the appellants and, thereafter, proceed in the manner indicated by us.

7. Both the writ appeals shall stand disposed of in terms of the above directions.

8. A copy of this order be furnished to Mr R Dubey, learned counsel assisting Mr KN Choudhury, learned Addl. Advocate General, Assam