GAHC010044862020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1505/2020

ABDUL SALAM
S/O- LT. SEKENDAR ALI, R/O- VILL. MAHMARA RESERVE, P.S. LAHORIGHAT, DIST. MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 3 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, JAISALMER HOUSE, 26, MANSINGH ROAD, NEW DELHI- 110011.

2:THE STATE OF ASSAM
REP. BY ITS SECY.
DEPTT. OF HOME
DISPUR, GHY.- 06.

3:THE SUPDT. OF POLICE (B)
MORIGAON, DIST.- MORIGAON
ASSAM, PIN- 782105.

4:THE ELECTION OFFICER
MORIGAON, DIST.- MORIGAON
ASSAM, PIN- 782105

Advocate for the Petitioner : MR. B C DAS

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

Date : 23-02-2021

For the Appellant : Mr. U. Dutta, Adv.

For the Respondent(s) : Ms. L. Devi, SC, NRC
: Ms. B. Das, SC, ECI
: Ms. J. Sarma, CGC
: Mr. G. Sarma, SC, FT

Date of Hearing & Date of Judgment : 23.02.2021

JUDGMENT & ORDER (ORAL)

(N. Kotiswar Singh, J)

Heard Mr. U. Dutta, learned counsel for the petitioner. Also heard Ms. L. Devi, learned Standing counsel for the NRC as well as Ms. J. Sarma, learned Central Government Counsel, Ms. B. Das, learned Standing counsel for the Election Commission of India and Mr. G. Sarma, learned Standing counsel for the Foreigners Tribunal.

2. The present writ petition has been filed, being aggrieved by the Opinion dated 24.05.2018 expressed by the Foreigners Tribunal No. 2, Morigaon, Assam in Case No. F.T.(C) No 09/16 arising out of Police Reference I.M.(D).T. Case No. 563/2003 dated 18.07.2003 declaring the petitioner to be a foreigner of post 25.03.1971 stream, and thereby directing the authorities to delete the name of the petitioner from the voters list, and also subsequent order dated 20.09.2019 passed by the same Tribunal dismissing the petition seeking review of the earlier opinion dated 24.05.2018 based on certain corrected voters lists and land documents.

3. Without going much into the detail facts of the case, it would suffice to

mention herein only few of the relevant facts. A proceeding was initiated in terms of a reference made by the Superintendent of Police (B), Morigaon mentioned above, to the learned Chairman, Illegal Migrant (Determination) Tribunal, Nagaon against the petitioner, Md. Abdul Salam S/o- Late Sekendar Ali, village- Mahmara Reserve, P.S. Lahorighat, District- Morigaon, Assam, suspecting him to be a foreigner who entered India (Assam) after 25.03.1971. Subsequently, the said reference was transferred to the Foreigners Tribunal No. 2, Morigaon, Assam in Case No. F.T.(C) No 09/16.

4. The petitioner being duly notified, appeared before the Tribunal and submitted his written statement along with the relevant documents. The petitioner, along with other documents, filed certified copies of the voters lists of 1966 and 1970. In the voters list of 1966, the name of the petitioner's grandfather was recorded as "Abbas Ali, S/o Babujan" and his age was shown to be 45 years and the father of the petitioner was shown as "Sekendar Ali, S/o Abbas Ali" and his age was shown to be 50 years. Similarly, in the voters list of 1970, the name of the petitioner's grandfather "Abbas Ali S/o Babujan", was again shown as 50 years of age and the name of his father "Sekendar Ali, S/o Abbas Ali" was shown to be 55 years old.

5. The petitioner unwittingly without verifying the correctness of the age entered in the certified copies of these voters lists of 1966 and 1970 filed these and other documents and exhibited the same. Unfortunately, when the matter was considered by the Tribunal, the Tribunal opined that the grandfather's age was 45 (forty five) in the 1966 voters list and the father's age was 50 (fifty). Similarly, the grandfather's age was recorded as 50 (fifty) in the 1970 voters list and the age of the petitioner's father was recorded as 55 (fifty five) years. Thus, the father was shown to be 5 (five) years older than his grandfather. Therefore, the learned Tribunal disbelieved these documents as unreliable and untrustworthy as can be seen from the Opinion dated 24.05.2018. The relevant

portions of the opinion of the learned Tribunal reads as follows:-

> "*The **Ext. "A"** and **Ext. "B"** are the voter lists of 1966 and 1970 respectively and the proceedee claim that the name at Sl. No. 332 Sekendar Ali age 50 (fifty) years in his father and the name Sekendar Ali at Sl. No. 332 aged about 55(fifty five) years in the voter list of 1970 is also his father. On scrutiny of the voter lists of 1966 and 1970 it is found that in the voter list of 1966 the name of one Abbash Ali age 45 (forty five) years has been recorded at Sl. No. 330 and in the voter list of 1970 also the name Abbash Ali age 50 (fifty) years has been recorded at Sl. No. 330 of the voter list. The proceedee neither in his W/S nor in his evidence has explained his relationship with Abbash Ali and the relationship of Abbash Ali with Sekendar Ali whom he claims to be his father. On questions put by the Court, the proceedee stated that Abbash Ali is his grandfather. On scrutiny of the documents **Ext. "A"** and **Ext. "B"** it is found that the age of Abbash Ali in 1966 has been recorded as 45 (forty five) years and age of Sekendar Ali whom proceedee claims to be his father in the voter list of 1966 has been recorded as 50 (fifty) years. Similarly, in the voter list of 1970 the age of Abbash Ali has been recorded as 50 (fifty) years and the age of Sekendar Ali has been recorded as 55 (fifty five) years. The age of grandfather can never be less than the father. As such in no way it can be believed that the voter list of 1966 and 1970 are that of the proceedee's father. Moreover, the proceedee has not produced any land document or any other tenancy document to show that his father had landed property and resided in the House No. 64 recorded in the voter list of 1966 and 1970 at the time of house to house enumeration which was carried out before recording names in the voter lists. The proceedee has also not produced original Electoral Roll to prove the contents of the documents and has not examined the official who had issued the certified copy. Apparently it appears that the documents **Ext. "A"** and **Ext. "B"** are picked up documents standing in the name of Sekendar Ali whose name resembles the name of the father of the proceedee and the contents of the documents have not been proved from the original Electoral Roll. In view of the Judgment and Order dated 05.04.2018 passed by the Division bench of the Hon'ble Gauhati High Court in WP(C) No.*

*3728/2016 (Nasir Uddin Vs. Union of India and Ors.) the documents cannot be accepted as reliable and trustworthy documents. The documents Exts. "**D", "E", "F" and "G"** are the voter lists of 1997, 2005, 2010 and 2014 which the proceedee claims to be his own voter lists. But the documents are of post 1971 period and merely recording of name in the voter list by itself is not a conclusive proof of citizenship. As such the documents cannot be accepted in support of the proceedee's claim of Indian Citizenship".*

6. Thus, the aforesaid voters lists of 1966 and 1970 which were exhibited as Ext. "A' and "B" before the Tribunal were not accepted as reliable and trustworthy but manufactured documents. There could perhaps, be no disagreement with such conclusion arrived at, based on the entry of the age of the father and the petitioner's grandfather in the aforesaid voters lists of 1966 and 1970. The matter stood as such till the petitioner was informed of the defects in the voters lists and obtained copies of the same and sought review of the opinion of the Tribunal.

7. According to the petitioner, pursuant to the aforesaid opinion rendered by the Tribunal, he was kept in detention. He, however, subsequently came to know from his co-villagers that there had been some mistakes while issuing certified copies of the voters lists of 1966 and 1970 as mentioned in his review application filed before the Tribunal. On obtaining the certified copies of the correct voters lists of 1966 and 1970, the petitioner approached the Tribunal seeking review of the opinion which was based on the incorrect certified copies of the voters lists submitted earlier by the petitioner, which however, was rejected on the ground that the Tribunal does not have the power to entertain any application for review after a lapse of 30 (thirty) days.

8. It has been submitted by the petitioner that after coming to know that the certified copies of the voters lists of 1966 and 1970 submitted before the

Tribunal earlier were not correct, one of his brothers, namely, Md. Jalal Uddin went to the Office of the Election Officer, Morigaon, and with the help of the officials inspected the voters list of 1970 but he was unable to trace out the voters list of 1966 immediately. Upon inspection of the voters list of 1970, it was found that the age of the grandfather of the petitioner was reflected as 80 (eighty) years. Accordingly, he applied for a certified copy of the voters list of 1970 which was delivered to him on 20.05.2019. Later on, he could inspect the voters list of 1966 and upon inspection, it was found that the age of the grandfather of the petitioner was reflected as 75 (seventy five) years in the said voters list and, accordingly, applied for a certified copy of the same. On obtaining the certified copies of the voters lists of 1966 and 1970 as mentioned above, the petitioner found that in the corrected voters list of 1966, the age of the petitioner's grandfather, "Abbas Ali, S/o- Babujan" was reflected as 75 (seventy five) years and that of his father, "Sekendar Ali, S/o- Abbas Ali" as 50 (fifty) years, thus showing a difference of 25 years between them. Similarly, in the corrected certified copy of the voters list of 1970, the age of the grandfather of the petitioner, "Abbas Ali" was shown to be 80 (eighty) years and the petitioner's father was shown to be 55 (fifty five) years, thus corresponding to their age shown in the voters list of 1966 thereby, showing correctly the age of the petitioner's father as well as grandfather in the two voters lists.

9. It has also been submitted that his grandfather as well as his father during their lifetime owned and possessed landed properties at villages - Mohmara and Nagabandha. It has submitted that the father of the applicant during his lifetime sold the aforesaid lands to others. After receiving notice from the Foreigners Tribunal, he tried to trace out the details of these lands with the intention to collect the certified copies of the Jamabandi to submit before the Ld. Tribunal in support of his claim that he is an Indian. However, despite his best efforts, he was not able to trace out the details of the aforesaid lands and thus could not collect the certified copies of the Jamabandi of the aforesaid

lands. It was only after petitioner was kept in the detention camp, other family members again tried to trace out the details of the lands sold. After vigorous search they were able to trace out the land details and thereafter, applied for the certified copies of the Jamabandi in respect of land of Patta No. 17 (New) and Patta No. 57 (New) of village - Mohmara. The concerned office on application issued the certified copies of the Jamabandi of the aforesaid pattas on 18.05.2019 and 28.05.2019.

10. Accordingly, equipped with the correct certified copies of the voter lists of 1966 and 1970 and of the Jamabandi, the petitioner approached the Foreigners Tribunal (2nd), Morigaon, Assam by filing a review petition, which was registered as Review Petition No. 04/2019 for reviewing the Opinion dated 24.05.2018 passed by the Tribunal in F.T.(C) Case No. 09/2016. However, the learned Tribunal rejected the same vide order dated 20.09.2019 holding that though Order 3A(2), and 3C(2) of the Foreigners (Tribunals) Order, 1964 after amendment, permit review of the decision of Foreigners Tribunal within a period of 30 (thirty) days, the Tribunal cannot review its opinion after 30 (thirty) days, as the Tribunal does not have the power to condone any delay beyond the prescribed period of 30 (thirty) days within which the Tribunal can review its order.

11. Being aggrieved, the petitioner has approached this Court by filing the present writ petition.

12. We, are thus, in this proceeding primarily concerned with the correctness or otherwise of the view of the Tribunal that the Tribunal has no power to review its own order after expiry of 30 (thirty) days and whether there is any remedy available, if there is no such power of review by the Tribunal after thirty days.

13. It is not in dispute that there is no Appellate Forum available to challenge the order or opinion of the Foreigners Tribunal. It has been reiterated by the Hon'ble Supreme Court in ***Abdul Kuddus –Vs- Union of India and Ors.*** reported in ***(2019) 6 SCC 604,*** that this Court in exercise of the power of Judicial Review under Article 226 of the Constitution of India can examine the legality of the opinion of the Tribunal. Such examination, ordinarily, can be done by issuing a writ of certiorari.

It is now well settled that a writ of certiorari will lie if certain relevant factors/materials have not been considered, or if the consideration is based on certain irrelevant materials. Though in the present case, apparently no fault can be found with the learned Tribunal in rendering its opinion based on certain certified copies of voters lists submitted by the petitioner, the contention of the petitioner is that the opinion rendered by the Tribunal on 24.05.2018 was based on certain erroneous certified copies of the voters lists of 1966 and 1970 supplied by the State authorities. If that is so, the opinion rendered by the learned Tribunal based on erroneous evidence can certainly be interfered by this Court in exercise of power under Article 226 of the Constitution of India. However, since, these new documents are yet to be considered by the Tribunal, it may not be appropriate for this Court at this first instance to consider the same.

14. If the petitioner is able to show that the earlier voters lists of 1966 and 1970 were indeed incorrect and the voters lists sought to be submitted subsequently were the correct ones, the Tribunal can certainly reconsider its earlier the opinion. These certified copies of the voters lists of 1966 and 1970 sought to be relied upon now by the petitioner show that the grandfather's age was more than the father's as mentioned above. The defective voters lists of 1966 and 1970 which were earlier submitted and relied upon by the petitioner and considered by the Tribunal will now be replaced by the corrected voters lists

of 1966 and 1970. In such an event, if these new certified copies of the voters lists are proved, these cannot be brushed aside as not trustworthy or unreliable. These documents certainly would have a bearing on the overall assessment of the evidences on record and are very relevant evidences to the issue involved. These, if proved, cannot be ignored by the Tribunal.

15. Thus, the problem before us is, how this Court, in exercise of the power under Article 226, can direct the Tribunal to consider these new documents, when it has been already decided by the Tribunal that it cannot look into the same for the purpose of reviewing as the Tribunal cannot undertake any such exercise of review beyond 30 (thirty) days of the passing of the opinion by the Tribunal.

16. Order 3A(2) of the Foreigners (Tribunal) Order, 1964, provides for a window of 30(thirty) days to apply for review of the opinion of the Tribunal by the proceedee that he is not a foreigner.

In this regard it may be appropriate to reproduce the provisions of Order 3A as follows:

"**3A. Procedure for setting aside *ex parte* order.**

(1) Where the Foreigners Tribunal has passed an *ex-parte* order for non-appearance of the proceedee and he or she has sufficient cause for not appearing before the Foreigners Tribunal, it may on the application of the proceedee, if filed within 30 days of the said order, set aside its *ex-parte* order and decide that is accordingly.

(2) The proceedee may file an application to the Foreigners Tribunal within thirty days to review the decision of the Foreigners Tribunal

claiming that he is not a foreigner and the Foreigners Tribunal may review its decision within thirty days of the receipt of such application and decide the on merits.

(3) Subject to the provisions of this order, the Foreigners Tribunal shall have the powers to regulate its own procedure for disposal of the cases expeditiously in a time bound manner."

The Tribunal, relying on the decision of the Hon'ble Supreme Court in ***Om Prakash –Vs- Ashwani Kumar Bassi*** reported in ***(2010) 9 SCC 183*** and other decisions rejected the application filed by the petitioner for review of the opinion by considering the said new documents after 30 (thirty) days as time barred.

17. This is how this matter has come up before us. We, are thus, called upon to decide as to whether this Court can direct the Tribunal to entertain the plea for review after thirty days.

18. Before we proceed, it may be noticed that there is no specific provision for condoning the delay in approaching the Tribunal for review after 30 (thirty) days. At the same time, there is also no provision specifically barring entertaining any application after 30 (thirty) days. The rule is silent on this aspect. Further, it may be noted that Order 3A(3) provides that subject to the provisions of the order, the Foreigners Tribunal shall have the powers to regulate its own procedure for disposal of the cases expeditiously in a time bound manner.

19. This takes us to the scope of power of the High Court under Article 226 to which an application would lie against an opinion/order passed by the Tribunal. As reiterated in ***Abdul Kuddus*** (supra) a person aggrieved by the

opinion/order of the Tribunal can challenge the findings/opinion expressed by way of a writ petition wherein the High Court would be entitled to examine the issue with reference to the evidence and material in the exercise of its power of judicial review premised on the principle of "error in the decision-making process", etc. and this serves as a necessary check to correct and rectify an "error" in the orders passed by the Tribunal.

The power of judicial review exercised by the High Court as well as scope of writ of certiorari against the orders of inferior courts or tribunals are well defined.

In ***Surya Dev Rai vs. Ram Chander Rai*, (2003) 6 SCC 675,** the Hon'ble Supreme Court held that

> "**10.** Article 226 of the Constitution of India preserves to the High Court the power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well settled. It would suffice for our purpose to quote from the seven-Judge Bench decision of this Court in *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] . The four propositions laid down therein were summarized by the Constitution Bench in *Custodian of Evacuee Property* v. *Khan Saheb Abdul Shukoor* [AIR 1961 SC 1087 : (1961) 3 SCR 855] as under: (AIR p. 1094, para 15)
>
> > "……..The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] and the following four propositions were laid down —
> >
> > (*1*) Certiorari will be issued for correcting errors of jurisdiction;
> >
> > (*2*) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it

> decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;
>
> (*3*) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous;
>
> (*4*) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

20. In the present case, it cannot be said that the Foreigners Tribunal in declining to accept the application of the petitioner for review of its opinion after 30 days committed any legal "error", for it was merely following the law as adumbrated in ***Om Prakash*** (supra) that provisions of Limitation Act, 1963 does not apply to statutorily created bodies other than "courts". But the fact also remains that the petitioner cannot be faulted with for not submitting the correct voters lists of 1966 and 1970 during the proceeding before the Tribunal as the petitioner was provided with defective voters lists of 1966 and 1970 by the State authorities. These defective documents were not created by the petitioner. These were official documents which were provided by the State authorities to the petitioner. If the State authorities were maintaining and providing defective voters lists, certainly the fault primarily lies with the authorities and the petitioner cannot be put to a disadvantageous position for the mistake committed by the authorities. If the plea of the petitioner is to be accepted that he was furnished with defective voters lists, it is because of the defective voters lists that the Tribunal gave an adverse opinion against the petitioner. Now that the petitioner has been able to procure the correct voters lists of 1966 and 1970, a great injustice would be caused to the petitioner, if the

petitioner is not afforded an opportunity to submit the same to the Tribunal for reconsideration of its opinion. If the petitioner is able to convince the Tribunal of the genuineness of the corrected voters lists of 1966 and 1970 and that "Sekendar Ali" and "Abbas Ali" included in the said lists are indeed his father and grandfather respectively with the age difference of about 25 years between them, the petitioner can legitimately claim himself to be a citizen of this country and not a foreigner. Thus, there a very high stake is involved in the application of the petitioner seeking review of the opinion of the Tribunal based on the aforesaid voters lists. The review application filed by the petitioner before the Tribunal was not a routine application for review. The fate and a very valuable right of the petitioner about his citizenship will be determined on the basis of the aforesaid documents. Citizenship, in the modern State, is perhaps the most important attribute of a person, without which, a person can hardly enjoy any of the rights conferred, protected and guaranteed by the State. If the petitioner is declared as a foreigner as has been done, he shall be forfeited with many of the rights and fundamental rights guaranteed by the Constitution of India. It is in that context that it can be said that a great prejudice and the gross injustice may be caused to the petitioner, if the prayer of the petitioner seeking review of its opinion is not allowed on the ground of delay.

21. If the Tribunal had been invested with the power to condone the delay in approaching it, perhaps the issue raised in the present case might not have arisen. Yet, because of this technical hurdle, the petitioner is not being able to approach the Tribunal to seek review of its opinion which may cause gross injustice and prejudice to the petitioner. If, the petitioner is indeed the son of Sekender Ali and grandson of Abbas Ali, as claimed by the petitioner and is able to prove so through these documents, a great injustice will be caused him by stripping him of his citizenship, because of the fault of the State.

22. It is in this context that this Court has to examine whether, the High Court in exercise of the power conferred under Article 226 of the Constitution of India, can direct the Tribunal to accept the application even after lapse of 30

days mentioned under Order 3A(2) of the Foreigners (Tribunals) Order, 1964.

23. As regards technical hurdles like availability of alternative remedy and limitation coming in the way of relief being granted by the High Court exercising writ jurisdiction, similar issue had been considered by the Apex Court by invoking the doctrine of *ubi jus ibi remedium* to provide the needed relief. The Hon'ble Supreme Court in***Shiv Shankar Dal Mills v. State of Haryana*, (1980) 2 SCC 437** observed as follows:-

> "1. .....Where public bodies, under colour of public laws, recover people's moneys, later discovered to be erroneous levies, the dharma of the situation admits of no equivocation. There is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor is it palatable to our jurisprudence to turn down the prayer for high prerogative writs, on the negative plea of "alternative remedy", since the root principle of law married to justice, is *ubi jus ibi remedium*. Long ago Dicey wrote:
>
> > "The law *ubi jus ibi remedium*, becomes from this point of view something more important than a mere tautological proposition. In its bearing upon constitutional law, it means that the Englishmen whose labours gradually formed the complicated set of laws and institutions which we call the Constitution, fixed their minds far more intently on providing remedies for the enforcement of particular rights or for averting definite wrongs, than upon any declarations of the Rights of Man or Englishmen.... The Constitution of the United States and the Constitutions of the separate States are embodied in written or printed documents, and contain declaration of rights. But the statesmen of America have shown an unrivalled skill in providing means for giving legal security to the rights declared by American Constitutions. The rule of law is as marked a feature of the United States as of England."

24. In the same decision in ***Shiv Shankar (supra),*** the principle of equity

was invoked to remedy legal injury by exercising the extraordinary jurisdiction. It was held that,

> "**6**. Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects:
>
> > "Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest... [27 Am Jur 2/d Equity, p. 626] ....."

25. One may also note what the Supreme Court held to similar effect that a person with a grievance must have a remedy for redressal in ***Bhagubhai Dhanabhai Khalasi v. State of Gujarat*, (2007) 4 SCC 241, as follows:**

> "**10.** A party having a grievance must have a remedy. Access to justice is a human right. When there exists such a right, a disputant must have a remedy in terms of the doctrine *ubi jus ibi remedium*."

26. It may be also mentioned that the decision of the Hon'ble Supreme Court in ***Om Prakash*** (supra) on the basis of which the Tribunal rejected the application filed by the petitioner for review as time-barred, was considered by the Hon'ble Supreme Court in ***M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510.*** The Hon'ble Supreme Court in ***M.P. Steel Corpn.*** (supra) proceeded to examine the issue from the perspective of advancing the cause of justice. While reiterating the principle that provisions of Limitation Act, 1963 apply in respect of proceedings being prosecuted in courts proper, i.e., courts, as understood in the strict sense of being part of the Judicial Branch of the State, the Supreme Court held that the principles underlying provisions of Limitation Act may be applied to quasi-judicial tribunals also so long as there is

nothing in the relevant statutory scheme that rules out or bars applicability of such principles. It was held that courts always lean in favour of advancing the cause of justice where a clear case is made out for doing so, since justice and reason is at the heart of all legislation.

27. In the aforesaid ***M.P. Steel Corp.*** (supra), the Hon'ble Supreme Court was considering applicability of Section 14 of the Limitation Act, 1963 in a proceeding before the Commissioner (Appeals) under Section 128 of the Customs Act.

It was held in***M.P. Steel Corp.*** (supra) as follows:

> "**20.** Now to the case law. A number of decisions have established that the Limitation Act applies only to courts and not to tribunals. The distinction between courts and quasi-judicial decisions is succinctly brought out in *Bharat Bank Ltd.* v. *Employees* [1950 SCR 459 : AIR 1950 SC 188] .
>
> .....
>
> .....
>
> **22.** A series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi-judicial bodies .....
>
> .....
>
> **28.** Two other judgments of this Court need to be dealt with at this stage. In *Mukri Gopalan* v. *Cheppilat Puthanpurayil Aboobacker* [(1995) 5 SCC 5], a two-Judge Bench of this Court held that the Limitation Act would apply to the appellate authority constituted under Section 13 of the Kerala Buildings (Lease and Rent Control) Act, 1965. This was done by applying the provision of Section 29(2) of the Limitation Act. Despite referring to various earlier judgments of this Court which held that the Limitation Act applies only to courts and not to tribunals, this Court in this case

held to the contrary. In distinguishing the *Parson Tools case* [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] , which is a three-Judge Bench binding on the Court that decided *Mukri Gopalan case* [(1995) 5 SCC 5] , the Court held: (*Mukri Gopalan case* [(1995) 5 SCC 5] , SCC p. 23, para 18) ....

.....

It then went on to follow the judgment in *CST* v. *Madan Lal Das & Sons* [(1976) 4 SCC 464 : 1977 SCC (Tax) 27] , which, as has been pointed out earlier, is not an authority for the proposition that the Limitation Act would apply to tribunals. In fact, *Mukri Gopalan case* [(1995) 5 SCC 5] was distinguished in *Om Prakash* v. *Ashwani Kumar Bassi* [(2010) 9 SCC 183 : (2010) 3 SCC (Civ) 648] , at para 22 as follows: (*Om Prakash case* [(2010) 9 SCC 183 : (2010) 3 SCC (Civ) 648] , SCC p. 188) ....

.....

38. We have already held that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply. We must never forget, as stated in *Bhudan Singh* v. *Nabi Bux* [(1969) 2 SCC 481 : (1970) 2 SCR 10] that justice and reason is at the heart of all legislation by Parliament. This was put in very felicitous terms by Hegde, J. as follows: (SCC p. 485, para 9)

9. "Before considering the meaning of the word 'held' in Section 9, it is necessary to mention that it is proper to assume that the

lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on '*Statutory Constructions*' that the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the lawmakers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."

39. This is why the principles of Section 14 were applied in *J. Kumaradasan Nair* v. *Iric Sohan* [(2009) 12 SCC 175 : (2009) 4 SCC (Civ) 656] to a revision application filed before the High Court of Kerala. The Court held: (SCC pp. 180-81, paras 16-18)

> *16.* "The provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake. The provisions of Sections 5 and 14 of the Limitation Act alike should, thus, be applied in a broad based manner. When sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean that the principles akin thereto would not be applied. Otherwise, the provisions of Section 5 of the Limitation Act would apply. There cannot be any doubt whatsoever that the same would be applicable to a case of this nature.

17. There cannot furthermore be any doubt whatsoever that having regard to the definition of 'suit' as contained in Section 2(*l*) of the Limitation Act, a revision application will not answer the said description. But, although the provisions of Section 14 of the Limitation Act per se are not applicable, in our opinion, the principles thereof would be applicable for the purpose of condonation of delay in filing an appeal or a revision application in terms of Section 5 thereof.

18. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficent provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner. When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, sub-section (2) of Section 14 of the Limitation Act per se may not be applicable, but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof."

40. The Court further quoted from *Consolidated Engg. Enterprises* [(2008) 7 SCC 169] an instructive passage: (*Iric Sohan case* [(2009) 12 SCC 175 : (2009) 4 SCC (Civ) 656] , SCC p. 183, para 21)

21. "In Consolidated Engg. Enterprises vs. Irrigation Deptt. [(2008) 7 SCC 169] this Court held: (SCC p. 181, para 22)

22. "The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the 1996 Act. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the

> equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.'
>
> See *Shakti Tubes Ltd.* v. *State of Bihar* [(2009) 1 SCC 786 :(2009) 1 SCC (Civ) 370] ."

28. It may be noted that in the above referred case of ***M.P. Steel Corp.*** (supra), the Supreme Court highlighted the ennobling provisions of Section 5 and 14 of the Limitation Act to grant relief where a person has committed some mistake and, accordingly, held that these provisions should be applied in broad based manner, as held in ***Kumardasan Nair*** (supra).

In the present case, the mistake was not of the petitioner but of the State authorities in providing with erroneous voters lists of 1966 and 1970. Thus, this equity based principles contained in Section 5 of the Limitation Act should be applicable in the present case with equal force.

29. Further, as discussed above, Order 3A (3) of the 1964 Order provides that, subject to the provisions of this order, the Foreigners Tribunal shall have the powers to regulate its own procedure for disposal of the cases expeditiously in a time bound manner. Thus, this general provision enabling the Tribunal to regulate its own procedure can certainly be also invoked to condone any delay, if found just and reasonable. It may be noted that there is no provision under the 1964 Order that no application can be entertained after lapse of thirty days of the passing of the order/opinion.

30. As noted above, the opinion of the Tribunal as regards citizenship of the proceedee has a far-reaching consequence for, if he is not able to discharge the burden cast upon him person under Section 9 of the Foreigners Act, he will be declared a foreigner and as a result he will be liable to be deported from this country. Section 9 of the Foreigners Act, 1946 places the onus of proof on the person when any question arises as to whether the person is a foreigner or not. Most of the fundamental rights and other legal rights enjoyed by an Indian

citizen in this country will stand forfeited if the petitioner is declared a foreigner. Such is the importance of the opinion of the Foreigners Tribunal. As per the existing legal framework, there is no provision for appeal against the opinion of the Tribunal. Thus, there is no appellate forum available to examine the correctness or otherwise of the opinion of the Foreigners Tribunal by appreciating the evidences assessed by the Tribunal. There is only a limited power of supervision by the High Court in exercise of the power of judicial review under Article 226. Thus, considering the enormity of the stakes involved in the proceeding before the Foreigners Tribunal and in absence of any appellate forum which otherwise would have provided a wider scope of examining the legality of the opinion/order of the Tribunal, but only a limited supervisory power of the High Court under Article 226 of Constitution of India, if this Court feels that a gross prejudice or injustice may be caused to any person, this Court can invoke its extraordinary power based on the principle of *ubi jus ibi remedium* and doctrine of equity, and direct the Tribunal to entertain such an application for review even if it is beyond the period of limitation provided under rules.

31. In the light of the aforesaid decisions, we, would hold that, even though the provisions of Limitation Act, 1963 may not be applicable in a proceeding before the Foreigners Tribunals in the strict legal sense, yet, there is nothing in the Foreigners (Tribunal) Order, 1964 which specifically excludes application of the principles of the Limitation Act. Hence, the principles underlying Section 5 of the Limitation Act can be made applicable in the proceedings before the Tribunal, where it advances the cause of justice and also by applying the principle of *ubi jus ibi remedium*.

We have already noted that in the present case, if the review application is not allowed, it would lead to gross injustice to the petitioner.

32. Thus, we, in exercise of our extra-ordinary jurisdiction conferred under Article 226 of the Constitution of India are inclined to grant the petitioner opportunity to approach the Tribunal to file these certified copies of the voters

lists of 1966 and 1970 which show that the age of the grandfather was more than the age of father. The Tribunal after assessing the genuineness and authenticity of the same and on consideration of these documents with other documents which are already on record will re-consider its opinion and pass a fresh opinion.

We have also noted that the learned Tribunal, while passing the impugned opinion on 24.05.2018, had made an observation that other documents, namely, Exts. H(ii), H(iii), H(iv) and H(v)and also documents Exts. "I", "J", "K", "L" and "M" would have no relevancy in the case as the voters lists of 1966 and 1970 were found to be not reliable and trustworthy. Thus, it appears that the learned Tribunal gave the opinion against the petitioner mainly on the ground that these documents, viz., voters lists of 1966 and 1970 exhibited as Ext- "A" and "B" were not trustworthy and not reliable, and as such, the other documents have no relevancy. From the above, it is clearly evident that the adverse opinion of the Tribunal was primarily based on the earlier defective voters lists of 1966 and 1970.

33. The petitioner has also drawn our attention to two land documents as mentioned as para-2 and para-6 of the review application i.e. Jamabandi of village- Mohmara of 1932 and Jamabandi of the same village of 1969-70. According to the petitioner, these documents which were obtained belatedly could not be also considered as the learned Tribunal rejected the Review Application on the ground of delay.

34. The petitioner submits that he may be allowed to rely on these land documents also. On this aspect, Mr. Sarma, learned State Counsel has objected on the ground that the same had not been mentioned in the written statement presented before the Tribunal and as such subsequently produced documents could not be considered.

35. As regards his objection, we have examined the copies of the land

documents attached in this petition. It appears that though these documents were obtained subsequently, the documents appear to be relating to the year 1932 and the 1969-70 which are very relevant documents preceding the proceeding.

Further, if these documents were discovered belatedly, the petitioner could not have mentioned these in his written statement. Thus, we are of the view that non mentioning of these land documents in the written statement will not debar the petitioner from relying on the same.

In that view of the above, as these documents would have some relevancy and since we have already allowed the petitioner to approach the Tribunal which will consider his citizenship on the basis of voters lists, we feel that no prejudice will be caused to the State if the said two land documents are also allowed to be relied on, subject to admissibility and reliability as per law.

36. Accordingly, the order dated 20.09.2019 passed in Review Petition No. 04/2019 is set aside with the direction to the Tribunal reconsider the case of the petitioner that he is an Indian citizen not a foreigner, by taking into consideration, the aforesaid certified copies of the voters lists of 1966 and 1970 and certified copies of the Jamabandi in respect of land of Patta No. 17(New) and Patta No. 57 (New) of village –Mohmara dated 18.05.2019 and 28.05.2019.

The learned Tribunal will, accordingly, pass a fresh order which will supersede the earlier opinion dated 24.05.2018 in Case No. F.T.(C) 09/2016.

37. Since the petitioner has already been declared a foreigner by the Tribunal and his nationality has come under cloud, we direct that though the petitioner will be released from detention to pursue his case before the Tribunal, he will continue to remain on bail on furnishing a bail bond of Rs.5,000/- (Rupees five thousand) with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Morigaon. The concerned Superintendent of Police (Border) shall also take steps for capturing the fingerprints and biometrics

of the iris of the petitioner, if so advised. The petitioner shall appear before the concerned Superintendent of Police (Border) as and when required. The petitioner shall also not leave the jurisdiction of Morigaon district without furnishing the details of the place of destination and necessary information including the contact number to the Superintendent of Police (Border), Morigaon. The petitioner within 30(thirty) days of his release shall appear before the Foreigners Tribunal 2nd, Morigaon, Assam, failing which the opinion dated 24.05.2018 shall stand revived and law will take its own course.

38. Mr. Sarma, learned standing counsel submits that this order passed in this case may be confined to this case only and it may not be precedence for the other cases. We have noted his submission with the observation that each case is to be examined on its own merit.

39. Records be immediately sent back to the Tribunal.

40. Copy may be furnished to Superintendent of Police (Border), Morigaon and also to the concerned authority of detention camp at Tezpur for immediate release of the petitioner.

JUDGE **JUDGE**

Comparing Assistant