

**HIGH COURT OF DELHI AT NEW DELHI**

**W.P. (Crl.) 677/2008**

**Date of Decision: August 12, 2008**

Razia Begum & Ors. ... Petitioners  
Through: Mr. Rajiv Dutta, Sr. Adv.  
with Mr. Hiren Dasan, Adv.

Versus

STATE & Ors. ... Respondents  
Through: Ms. Mukta Gupta, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE S.L. BHAYANA**

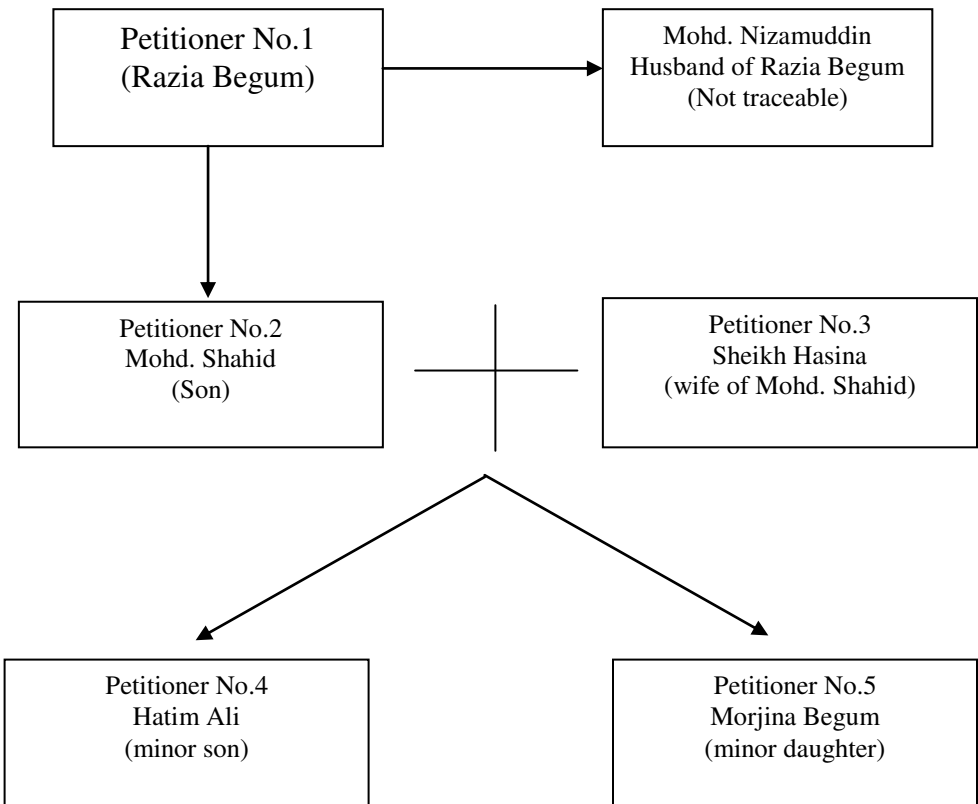
1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

**S. L. BHAYANA, J.**

This is a writ petition filed under Article 226 of the Constitution of India read with Section 482 Cr.PC for quashing and setting aside deportation order dated 23.04.08, passed by respondent No.4, i.e., DCP, Foreigners Regional Registration Office, New Delhi.

2. Briefly stated facts of the case are that on 28.12.2007 acting on a secret information 16 persons including petitioners No.2 to 5 were apprehended from the area of P.S. Khanpur, New Delhi by the Deportation Cell, South District. On enquiry, it was revealed that they all were illegal migrants from Bangladesh and came to India illegally.

3. Learned counsel for the petitioner contended that all the petitioners, namely, Razia Begum, Mohd. Nizammuddin, Sheikh Hasina, Mohd. Shahid, Hatim Ali and Marjina Begum are Indian nationals and in support of his contention, he produced picture of lineal descendents of Razia Begum, petitioner No.1, who has filed the present writ petition. Chart of lineal descendents of Razia Begum is given below because all the other petitioners claim to be Indian citizens through her, as natural citizens, as they were born out of the wedlock of Razia Begum and Mohd. Nizammuddin. Mohd. Nizammuddin could not be examined so far by the authorities as he is not traceable and petitioner No.1 did not disclose any information about him.



4. To buttress his arguments, learned counsel for the petitioner has shown me ration card and an election card, which he claims to have been issued to persons, who are sought to be deported and he claims that once a ration card or an election card is issued to a person he is deemed to be an Indian citizen.

5. Learned counsel for the State, on the other hand, submitted that on inquiry it was revealed that Razia Begum, petitioner no.1 and her husband Mohd. Nizammuddin are not Indian nationals. They had been illegally migrated to India from Bangladesh in 1990s and during that period they got prepared identity card, ration card, domicile certificate & national certificate.

6. It is further submitted that petitioner No.1 has failed to produce any documentary proof in support of her claim that she was born in India and lived at Qutubddin Dargah. She has also failed to produce any proof of birth of her son Mohd.Sahid and daughter-in-law, Sheikh Hasina and in which hospital or locality of India they were born. It is pertinent to mention here that parents of Sheikh Hasina have already been deported to Bangladesh by FRRO. They were

also apprehended along with Sheikh Hasina and other persons on 28.12.2007.

7. It is argued that petitioners have not come to this Court with clean hands as they have obtained the ration card, election card etc. on the basis of the false and fabricated documents. Petitioner No.1, Razia Begam, applied for Indian national passport, which was duly rejected by the concerned authority, not only once but thrice with different date of birth, addresses and even different mother's name during the period 25.05.98 to 17.06.99. She moved her first passport application on 25.05.1998 and gave her date of birth as 10.2.1956 and place of birth at Delhi. She gave her mother's name as Sabato Davi and gave her permanent address K-II 1012, Sangam Vihar, New Delhi. On inquiry by the police, it was revealed that the applicant was a Bangladeshi national and, therefore, her application was rejected.

8. On 18.03.99, she again moved her second passport application in which she gave her date of birth as 01.01.1960 and place of birth at Delhi. She gave her mother's name as Samat Bano and permanent address K-II 1012, Sangam Vihar, New Delhi and attached the irresolute documents, i.e., ration card, nationality certificate, election

identity card and an affidavit for date of birth. On inquiry by the police, it was revealed that the applicant was a Bangladeshi national and, therefore, her application was rejected.

9. On 17.06.1999, Razia Begum, petitioner no.1 again applied for issuance of passport, in which she gave her date of birth as 10.04.1957, place of birth at Delhi, mother's name as Samato Bano, permanent address as 252/2 Mehrauli, New Delhi and attached a number of documents, i.e., election identity card and an affidavit for date of birth. She succeeded in her third attempt and got issued an Indian national passport in her name on 31.07.99 on the basis of forged and fabricated documents and in collusion with the passport officials.

10. It is clear from the above that Razia Begum, petitioner No.1 got the passport issued on the basis of forged and fabricated documents. The petitioners are residing in India by manipulation and by false identity like ration card, election identity card. On the basis of these documents, they have also obtained counterfeit Nationality Certificate.

11. The Authorities had made inquiries about the petitioners. After the inquiry, it has become clear that each and every document submitted by the petitioners i.e. ration card, election identity card, nationality certificate etc. were obtained on the basis of false and forged documents.

12. It is fairly conceded by the counsel for the petitioner that Sheikh Hasina is a Bangladeshi national and that she has not applied for Indian citizenship after her marriage with Mohd. Shahid. He submits that Sheikh Hasina being Bangladeshi national can be deported.

13. It is submitted by learned counsel for the State that petitioner Nos.4 and 5 are the children of petitioner Nos.2 and 3 both born after 2003. As both of them are Bangladeshi nationals so they cannot claim Indian citizenship on the ground that one of their parents is a foreign national. In this regard, Section 3 of Citizenship Act, 1955 is reproduced below:

“Citizenship by birth—(1) Except as provided in sub-section (2), every person born in India  
(a) On or after the 26<sup>th</sup> day of January, 1950, but before the 1<sup>st</sup> day of July, 1987;  
(b) On or after the 1<sup>st</sup> day of July, 1987, but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is a citizen of India at the time of his birth;

- (c) On or after the commencement of the citizenship (Amendment) Act, 2003, where-
  - (i) both the his parents are citizens of India; or
  - (ii) One of whose parents is a citizen of India and the other is not an shall be a citizen of India by birth.
- (2) A person shall not be a citizen of India by virtue of this section if at the time of his birth—
  - (a) either his father or mother possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and he or she, as the case may be, is not a citizen of India; or
  - (b) his father or mother is an enemy alien and the birth occurs in a place then under occupation by the enemy.”

14. Admittedly Sheikh Hasina is a foreign national so respondent Nos. 4 and 5 have become foreign national as per Section 3 of the Citizenship Act, 1955.

15. Keeping in view the discussion above, I am of the opinion that petitioner nos.2 to 5 are Bangladeshi nationals and DCP, FRRO is fully empowered under Foreign National Act, 1946 to deport them as they are illegal immigrants. Merely, because ration card or election identity card has been obtained by fraudulent means, it does not ipso facto confer citizenship upon the foreigners. Conferring of citizenship is an act which is governed by law. A foreign national cannot automatically be deemed to be an Indian citizen without

complying with the procedure established by law in this respect.

16. Though in a criminal case the general rule is that the burden of proof is on the prosecution but if any fact is especially within the knowledge of the accused, he has to lead evidence to prove the said fact mandate of Section 106 of Indian Evidence Act 1872. There is a good and sound reason for placing the burden of proof upon the concerned person who asserts to be a citizen of a particular country. In order to establish one's citizenship, he may produce (or required to give evidence) of (i) his date of birth (ii) place (iii) name of his parents (iv) their place of birth and citizenship. In the present case, onus is upon the petitioners to prove that they are citizens of India in which they miserably failed.

17. There is a continuing influx of Bangladeshi nationals into India on account of a variety of reasons including religious and economic. It is difficult to make a realistic estimate of the number of illegal migrants as they are able to mingle easily with the local population due to ethnic and linguistic similarities. The large scale influx of illegal migrants has led to large tracts of sensitive borders which has serious implication for internal security. The influx of

Bangladeshi nationals who have illegally migrated poses a threat to the integrity and security of India. FRRO is duty bound in this regard to take all necessary measures. The order of deportation is not punishment but a method of ensuring the return to his own country of an alien who has not complied with the conditions. Hence the Bangladeshi nationals who have illegally migrated to India or trespassed into, have no legal right of any kind to remain in India and they are liable to be deported. It is well-settled in the International law that the persons who reside in the territories of countries of which they are not nationals, possess a special status under international law. States have a right to expel them from their territory and refuse to grant them certain rights which are enjoyed by their own nationals.

18. It is pertinent to mention here that the writ petition No.133/2008 filed by petitioner No.1 on 28.01.08 with the prayer that petitioners No.2 to 5 be not deported without the permission of the Court was earlier dismissed by this Court on 09.05.08.

19. In view of the foregoing discussion and keeping in view the inquiries made by the authorities with regard to the

identity of the petitioners, I do not find any infirmity in the order of deportation dated 23.04.08 passed by the authorities.

20. The writ petition is dismissed.

21. A copy of this order be given dasti under the signatures of the Court Master of this Court.

August 12, 2008  
Richa

S.L. BHAYANA, J.