

GAHC010010252017



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

Case No. : WP(C)/221/2017

RANJIT DAS
S/O. LT. NANDAL LAL DAS, VILL. KAYLAGHAT, P.S. KARIMGANJ, DIST.
KARIMGANJ, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE DEPUTY COMMISSIONER
KARIMGANJ.

4:THE SUPERINTENDENT OF POLICE B

KARIMGANJ
ASSAM.

5:THE OFFICER-IN-CHARGE
KARIMGANJ POLICE STATION

DIST. KARIMGANJ
ASSAM

Advocate for the Petitioner : MR.H R A CHOUDHURY

Advocate for the Respondent :

B E F O R E
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Date : 17-01-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. A Matin, learned counsel for the petitioner. Also heard Mr. G Sharma, learned counsel for the Home and Political Department, Government of Assam, Ms. K Phukan, learned counsel for the Deputy Commissioner Karimganj and Ms. J Sarma, learned CGC for the Union of India.

2. The petitioner Ranjit Das was referred to the Foreigner's Tribunal-II, Karimganj for an opinion as to whether he is a person who had entered India subsequent to 25.03.1971, which resulted in registration of the FT Case No.831/2007. In order to establish that he is not a person who had entered India subsequent to 25.03.1971, the petitioner made his own deposition before the Tribunal which is extracted as below:

"My name is Ranjit Das

My father's name is Nanda Lal Das.

I am by Caste Hindu.. My home is at Kaylaghat, Police Station- Patharkandi, District Karimganj, I reside at Village-..... Police Station..... District..... Where I am Cultivator.

O.S.A.

I am the O.P. of this Case. I was born in village- Uptakhali under Dharmanaga Police Station of North Tripura District of Tripura State. I cannot remember my date of birth. The name of my father is Nanda Lal Das. My father came to Kaylaghat in the year

1977 by saling the land of Uptakhali under Dharmanagar P.S. The name of my father is enlisted in the voter list 1966 of No.29 North Dharmanagar L.A.C. vide Sl.No.46, House No. Uptakhali of Part No.18. Ext.1 is the photo copy of the said voter list which is proved in original. My name is enlisted in the Voter List of 1977 of No.2 Patharkandi L.A.C. vide Sl.No.214 House No.72 of Part No.82(Ka). Ext.2 is the photo copy of said Voter List which is proved in original. My name is also enlisted in the Voter List of 2005 of No.2, Patharkandi L.A.C. vide Sl. No.257 House No.58 of Part No.89. Ext.3 is the Certified Copy of my Voter List. I am not a foreigner but a Citizen of India. Police referred my Case without any enquiry."

3. The petitioner also exhibited the voters' list of 1966 of village Uptakhali under 29 North Dharma Nagar Legislative Assembly Constituency of Dharmanagar Sub-Division in the State of Tripura wherein the name of his father Nanda Lal Dasi son of Shisanna Das appears at Sl.No.46. Petitioner also exhibited the voters' list of 1970 of village Uptakhali under 29 North Dharma Nagar Legislative Assembly Constituency of Dharmanagar Sub-Division in the State of Tripura wherein also the name of his father Nanda Lal Dasi son of Shisanna Das appears at Sl.No.46.

4. The petitioner also exhibited voters' list of 1985 showing the name of the village Kaylaghat under Patharkandi Police Station in the Karimganj district which contains the name of his father Nandalal Das, son of Shibendu Das as well as the voters' list of 1989 also of village Kaylaghat under Patharkandi Police Station in the Karimganj district wherein at Sl.No.808 contains the name of the petitioner Ranjit Das, son of Nandalal Das and at Sl.No.810 contains the name of his father Nandalal Das, son of Bishenya Das. The petitioner further exhibited the voters' list of 1993 of village Kaylaghat under Patharkandi Police Station in the Karimganj district wherein at Sl.846 contains the name of his father Nandalal Das son of Shishanya Kumar Das and at Sl.No.847 contains the name

of the petitioner Ranjit Das, son of Nandalal Das. The petitioner also exhibited an admit card annexed as Annexure –A page 14 to the writ petition issued by the Board of Secondary Education Assam which shows the date of birth of the petitioner to be 03.02.1971, but the admit card shows the name of the father of the petitioner to be Nanda Kumar Das.

5. The Tribunal by its order/opinion dated 26.02.2014 declared the petitioner to be a foreigner who entered India subsequent to 25.03.1971 and the order of the Tribunal is as extracted:

“This Misc Case (Review) case has been filed by the Petitioner/O.P. Ranjit Das under order 47 rule 1 CPC. for review the judgement and order dated 26/2/2014 passed in F.T. Case No. 831/2007. Alongwith the review petition Petitioner/ O.P. also filed a petition under Section 5 of the Limitation Act for condoning the delay in filing the Misc. (Review) Case.

During hearing virtually the Petitioner/O.P. failed to explain the delay satisfactorily. Mere poverty is not a ground for condoning the delay. Thus on the face of record Misc. Case (Review) case is time barred and liable to be dismissed.

The main contention of the Petitioner/O.P. is that during hearing of the F.T. Case NO. 831/2007 he could not produce some documents i.e. the voterlists of 1971, 1985, 1989, 1993, 1997 etc. Though it is nowhere stated that those documents were not within the knowledge of the Petitioner/ O.P. But however, facts remains O.P./ Petitioner could not produce those documents during hearing of the F.T. Case NO. 831/2007. So in my considered view on this count petitioner/O.P. has some merits to file this Misc. (Review) Case.

F.T. Case NO. 831/2007 has been referred against O.P. Ranjit Das son of Nandalal Das of village Kayalaghat under Patherkandi Police station. Ext.9 is the Admit Card submitted by the Petitioner/O.P. issued by the Board of Secondary Education Assam, Guwahati where the name of O.P.’s father has been recorded as Nanda Kumar Das which is not allied with the reference wherein the name of O.P.’s father has been mentioned as Nandalal Das. Again, from Ext.1 and Ext 4 the certified copies of the voterlists for the year 1965 and 1971 it appears that the name of father Nandalal Das has been recorded as Sishanna Das of village Untakali, North Tripura whereas in the voterlist of 1985 the name of father of Nandalal Das has been recorded as

Shibendra Das and in the voterlist of 1989 the name of father of Nandalal Das has been recorded as Bishenya Das of village Kayalaghat under Patherkandi Police Station.

According to Petitioner/O.P. the name of grandfather has been recorded as Shibendra Das and Bishenya Das instead of his actual name Sishanna Das. But facts remains O.P's stay within the territory of Assam since 1985 O.P's father's name has been recorded as Nandalal Das son of Shibendra Das and Bishenya Das and not Sishanna Das. So, these anomalies could not be cured in my considered view.

In the result the Misc. Case (Review) case is also not dismissed on merit.

The Misc. Case (Review) case stands dismissed.

Inform the concerned authority."

6. The Tribunal took note of the voters' list of 1966 of village Uptakhali under 29 North Dharma Nagar Legislative Assembly Constituency of Dharmanagar Sub-Division in the State of Tripura as well as the voters' list of 1997 of village Kaylaghat under Patharkandi Police Station in the Karimganj district, but as the petitioner could not produce any other document between the years 1970 and 1977, therefore, the Tribunal disbelieved the claim of the petitioner.

7. In the circumstance, the petitioner instituted a review before the Tribunal which resulted in the order dated 20.06.2016 by which the review sought for by the petitioner stood rejected on the ground that the additional documents were inadmissible under the law.

8. Being aggrieved by the order dated 26.02.2014 as well as the order dated 20.06.2016 of the Tribunal, this writ petition is instituted.

9. The documents produced by the petitioner being the voters' list of 1966 and 1970 of village Uptakhali under 29 North Dharma Nagar Legislative Assembly Constituency of Dharmanagar Sub-Division in the State of Tripura clearly show the name of Nandalal Das by showing him to be the son of

Shisanna Das as well as the voters' list of 1985 of village Kaylaghat under Patharkandi Police Station in the Karimganj district showing the name of Nandalal Das, son of Shibendu Das at Sl.No.661, whereas the voters' list of the year 1989 also of village Kaylaghat under Patharkandi Police Station in the Karimganj district at Sl.No.810 shows the name of Nandalal Das son of Bishenya Das, but however, the voters' list of 1993 of village Kaylaghat under Patharkandi Police Station in the Karimganj district at Sl.No.846 contains the name of Nandalal Das son of Shishanya Kumar Das along with the name of the petitioner Ranjit Das at Sl.No.847 showing his father to be Nandalal Das.

10. The deposition of the petitioner before the Tribunal is that his father Nanda Lal Das, who was earlier residing at village Uptakhali at Dharmanagar in the State of Tripura, and later on moved to village Kaylaghat under Patharkandi Police Station in the Karimganj district.

11. It is taken note that the respondent authorities had not cross-examined the said deposition of the petitioner, and, therefore, under the law the deposition of the petitioner has to be accepted to be uncontroverted. Reading together the deposition of the petitioner as well as the voters' list of 1966 and 1970 of village Uptakhali at Dharmanagar in the State of Tripura as well as that of the voters' list of 1985, 1989 and 1993 of village Kaylaghat under Patharkandi Police Station in the Karimganj district clearly establishes a linkage of the petitioner with that of Nandalal Das showing him to be a citizen of India. However, to satisfy the requirement of the Tribunal that no documents pertaining to the period between 1970 and 1977 was produced by the petitioner, the petitioner had exhibited an admit card issued by the Board of

Secondary Education, Assam to show his linkage with his father, Nandalal Das, but the admit card shows his father to be Nanda Kumar Das and not Nandalal Das. Considering the said discrepancy as regards the name of the father of the petitioner in the admit card, the matter is remanded back to the Foreigners' Tribunal II Karimganj for the limited purpose to give an opportunity to the petitioner to produce any relevant material/evidence that he would like to produce to explain the discrepancy in respect of the name of the father of the petitioner in the admit card that he had exhibited. It is clarified that the conclusions arrived herein that reading together the deposition of the petitioner as well as the voters' list of 1966 and 1970 of village Uptakhali at Dharmanagar in the State of Tripura as well as that of the voters' list of 1985, 1989 and 1993 of village Kaylaghat under Patharkandi Police Station in the Karimganj district clearly establishes a linkage of the petitioner with that of Nandalal Das showing him to be a citizen of India, is retained, and the Tribunal on the matter being remanded back to only go into the question of the discrepancy in the name of the father of the petitioner in the exhibited admit card and the implication thereof.

12. Accordingly, the matter stands remanded back for the aforesaid limited purpose. After rendering of evidence, the Tribunal may pass any reasoned order as may be admissible under the law. On the matter being remanded back, the order dated 26.02.2014 of the Foreigners Tribunal II Karimganj as well as the order in review dated 20.06.2016 are set aside.

13. Return back the LCR.

14. The petitioner to appear before the Tribunal on 17.02.2023.

15. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant