

GAHC010029152017



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

Case No. : WP(C)/3973/2017

MOHAMMAD ALI
S/O- LATE SAHED ALI @ MD. SAHED ALI@SAHED ALI SK @ SAHED ALI
DEWANI, R/O- VILL- PORAGAON, P.S- SORBHOG, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECRETARY TO THE MIN OF HOME AFFAIRS, GOVT OF
INDIA, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSION
BARPETA
DIST- BARPETA
ASSAM

4:THE SUPERINTENDENT OF POLICE
BARPETA
P.O AND DIST- BARPETA
PIN- 78130

Advocate for the Petitioner : MR.A R SIKDAR

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

JUDGMENT & ORDER (ORAL)

Date : 13-06-2023

(A.M. Bujor Barua)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 being the authorities under the Union of India, Ms. A Verma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of Government of Assam and Mr. NK Das, learned counsel for the respondent no. 3 being the Deputy Commissioner, Barpeta.

2. The petitioner Mohammad Ali was referred to the Foreigners Tribunal No. 8, Barpeta for rendering an opinion as to whether he is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of F.T. Case No. 207/2016. The Tribunal rendered an opinion dated 03.05.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. We have been taken through the notice served by the Foreigners Tribunal upon the petitioner and the name as it appears in the notice is Mohammad Ali S/O Sayadam of village Poragaon. The notice addressed to Mohammad Ali S/O Sayadam of village Poragaon was served on the petitioner Mohammad Ali S/O Sahed Ali of the same village Poragaon and he appeared before the Tribunal and in paragraph 14 of the written statement had taken a specific stand that he is Mohammad Ali S/O Sahed Ali of village Poragaon and not Mohammad Ali S/O Sayadam. The said aspect was also dealt with by the Tribunal in its opinion

dated 03.05.2017 in paragraph 7, which is extracted as below:

“7. I have perused the case record along with the WS and evidence available in the case record. The Proceedee/2nd Party i.e., DW1 Mahamad Ali in his WS and evidence has stated that he has been born and brought up at village: Poragaon, Mouza: Kharija Bijni, Dist: Barpeta. Proceedee submitted the following documents:-

(Ext.A) Annual Khiraj Patta,

(Ext.B) Voter list of 1965,

(Ext. C) Voter List of 1970,

(Ext.D) Voter list of 1997,

(Ext.E) Voter list of 2010,

(Ext.F) Gaonburah Certificate,

(Ext.G) Name of correction Affidavit.

(Annexure-2) Voter list of 1989.

Proceedee stated in his written statement and evidence on affidavit that his father actual name and correct name is Sahed Ali, Mother name is Sakina Bibi and grandfather name is Ajimuddin.

*But after perusal of the land document **(Ext.A)** annual Khiraj Patta, where Proceedee's father name appeared as Sahed Ali Sheikh and against his father name his grandfather name shown as Ajimuddin.*

*In the voter list of 1965 **(Ext.B)** where Proceedee's father name shown as Sahed Ali and against his father name his grandfather name appeared as Sajimuddin, similarly in the voter list of 1970 **(Ext.C)** Proceedee's father name shown as Sahed Ali against his name grandfather name shown as Sadimuddin.*

*In the voter list of 1997 **(Ext.D)** Abdul Hai where Proceedee's brother name appeared and against his name his father name appeared as Sayed.*

Gaonburah adduced his evidence as court witness No.1. he deposed that proceedee's father expired about 3 years ago but on the other hand DW1 deposed that his father expired at about 15-20 years ago statement made by the Gaonburah deposed that he asked the proceedee to accept the notice because Sayadam and Sahed is the same person. He further deposed that he wrote an application before the concerned authority for correction of this grandfather and father name statement made by the Gaonburah and DW2 are contradictory. DW2 further deposed that his family has a land at village Puragaon but DW1 OR DW2 never submitted any land revenue receipt of the said land.

Proceedee deposed that the notice which was issued by the Tribunal was in the name of Mahamad Ali which is his name but in the said notice his father name written as Sayadam. He deposed in his cross examination that his father name is not Sayadam.

Now the question arises if Sayadam is not his father why Proceedee at the first place accepted the notice. Moreover he could have refused to accept the notice. In the written statement and evidence on affidavit proceedee never mention anything in this regard only that his father name mistakenly recorded as Sayadam. Proceedee stated that Sahed Ali @ Md. Sayed Ali @ Sahed Ali Sheikh @ Sahed Ali Dewan @ Sayed @ Sayed Ali is one and the same person.

*Document submitted by the Proceedee cannot be relied upon, in every document which is marked as **Ext. A,B,C,D,E,F, Annexutire-2** Proceedee's father and grandfather's name are different."*

5. The Tribunal dealt in a manner as if the notice was issued to Mohammad Ali S/O Sayadam and it was served on Mohammad Ali S/O Sayadam and Mohammad Ali S/O Sayadam appeared before the Tribunal but took an incorrect stand that he is Mohammad Ali S/O Sahed Ali. Whatever documents are produced before the Tribunal to show that Mohammad Ali is the son of Sahed Ali were rejected by the Tribunal by simply providing that the documents submitted by the proceedee cannot be relied upon.

6. It is not a question whether the documents produced by the petitioner claiming that he is Mohammad Ali S/O Sahed Ali can be relied upon or not. But the fundamental question is to whom the notice was served and against whom the proceedings were initiated. If the proceedings were initiated against Mohammad Ali S/O Sayadam and notice was also accordingly issued to Mohammad Ali S/O Sayadam of Puragaon village but it was wrongly served on Mohammad Ali S/O Sahed Ali, it cannot be expected that Mohammad Ali S/O Sahed Ali by any means will prove his citizenship by showing that he is Mohammad Ali S/O Sayadam. It was for the Tribunal to introspect upon the

aforesaid aspect as to against whom actually the notice was served. It would have been more prudent if the Tribunal had decided the issue as to against whom the proceeding was initiated, whether it is Mohammad Ali S/O Sayadam or it is Mohammad Ali S/O Sahed Ali and thereafter take a call on the issue. If proceedings are against Mohammad Ali S/O Sayadam but the notice was wrongly served on Mohammad Ali S/O Sahed Ali, Mohammad Ali S/O Sahed Ali ought to have been discharged from the proceeding and the Tribunal ought to have looked around for the actual Mohammad Ali S/O Sayadam and then serve notice on the said person and proceed accordingly. But unfortunately the same has not been done by the Tribunal and unnecessarily a confusion has been created that the petitioner through his documents is unable to prove that Mohammad Ali S/O Sayadam is a citizen and as because the documents produced by the petitioner pertains to Mohammad Ali S/O Sahed Ali, therefore, those documents are to be disbelieved.

7. The entire approach of the Tribunal appears to be arbitrary and without any application of mind but however, as the notice has been issued upon Mohammad Ali S/O Sahed Ali, we proceed in the matter to examine as to whether Mohammad Ali S/O Sahed Ali to whom the notice was served would discharge the burden that he is not a foreigner.

8. For the purpose, Mr. AR Sikdar, learned counsel for the petitioner before the Writ Court refers to the voters' list of 1965 of village Poragaon Police Station Sorbhog in the present Barpeta district which contains the name of Sahed Ali S/O Sajimuddin at Sl. No. 188 and that of Sakina Bibi W/O Sahed Ali at Sl. No. 189, where both of them are shown to be residing in the same house no. 60. It is claimed that Sahed Ali is the father of the petitioner and Sakina Bibi is the mother. The names of Sahed Ali and Sakina Bibi also appear in the voters' list of

1970 of village Poragaon at Sl. No. 252 and 253 respectively where both of them are again shown to be residing in the same house no. 60. Reliance is placed on the voters' list of 1989 of village Poragaon which contains the name of Sahed Ali Dewani S/O Ajimuddin at Sl. No. 191 and that of Sakina Begum W/O Sahed Ali at Sl. No. 192 as well as that of Mohammad Ali S/O Sahed Ali at Sl. No. 198 where Sahed Ali Dewani and Sakina Begum are shown to be residing in the house no. 64 and Mohammad Ali is shown to be residing in the house no. 67. It is claimed that Mohammad Ali of the 1989 voters' list of village Poragaon is the petitioner himself whereas Sahed Ali Dewani is the father whose name had been written as Sahed Ali Dewani instead of Sahed Ali and Sakina Begum W/O Sahed Ali, is his mother, whose name is again written as Sakina Begum instead of Sakina Bibi as per the voters' list of 1965. Abdul Hai S/O Sahed Ali at Sl. No. 196 of the voters' list of 1989 of village Poragaon is claimed to be the brother of the petitioner who has also deposed before the Tribunal as DW2. The petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 has been discharged inasmuch as the name of Sahed Ali appears on the voters' list of 1965 and 1970 of village Poragaon and that the names of Sahed Ali Dewani, Sakina Begum and Mohammad Ali appear together in the voters' list of 1989 of village Poragaon along with Abdul Hai who has deposed as DW.2.

9. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' lists of 1965, 1970 and 1989 of village Poragaon. The petitioner to produce the complete voters' lists of Poragaon village of the years 1965, 1970, 1977, 1985 as well as 1989 for examination of the Tribunal. If the information contained therein is consistent enough to indicate that Mohammad Ali S/O Sahed Ali is actually Mohammad Ali S/O Sahed Ali of the 1989 voters' list, appropriate order may be passed. The Tribunal may also examine the

variation of the name of Sahed Ali of the 1965 voters' list and Sahed Ali Dewani of the 1989 voters' list of the same village Poragaon. The respondents in the Home Department may make their own enquiry and verification and submit a report before the Tribunal as well as to whether the Mohammad Ali of the voters' list of 1989 of village Poragaon and Mohammad Ali the writ petitioner are one and same person.

10. We further provide that this proceeding is to be carried forward further by the Tribunal on an understanding that the proceedee in the present case is Mohammad Ali S/O Sahed Ali of village Poragaon and not Mohammad Ali S/O Sayadam of village Poragaon and if the Tribunal is of the view that Mohammad Ali S/O Sayadam is actually to be proceeded against, appropriate notice be issued and served on Mohammad Ali S/O Sayadam of village Porgaon separately.

11. Ms. A Verma, learned counsel for the Home Department has referred to the evidence of DW3 Gaonburah who states that the name of the father is also Sahed Ali as well as Sayadam and that they are same person. The Tribunal may also look into the aspect and the respondents in the Home Department may make their own enquiry and verification and submit a report. Upon doing the needful, the Tribunal to pass a reasoned order.

12. The petitioner to appear before the Tribunal on 17.07.2023.

13. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant