

GAHC010071252018



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

Case No. : WP(C)/2230/2018

BARKAT ALI @ BARKAT MUNSHI
S/O LATE FAJAR ALI @ FAJAR MUNSHI, R/O- VILLAGE-NEPALPARA, PS-
DHALIGAON, DIST. CHIRANG (BTAD), ASSAM

VERSUS

UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, DEPTT. OF
HOME AFFAIRS, NEW DELHI

2:STATE OF ASSAM
REPRESENTED BY SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF HOME AFFAIRS
DISPUR
GUWAHATI-6

3:ELECTION COMMISSION OF INDIA
REPRESENTED BY THE COMMISSIONER
NIRBACHAN SADAN
NEW DELHI

4:STATE COORDINATOR OF NATIONAL REGISTRATION (NRC)
ASSAM
1ST FLOOR
ACHYUT PLAZA
GUWAHATI-SHILLONG ROAD
BHANGAGARH
GUWAHATI
ASSAM-781005

5:THE MEMBER
FOREIGNERS' TRIBUNAL

CHIRANG
DIST. CHIRANG (BTAD)
ASSAM

6:THE SUPERINTENDENT OF POLICE (BORDER)
CHIRANG
PO-KAJALGAON
DIST. CHIRANG
ASSAM

7:THE DEPUTY COMMISSIONER
CHIRANG
ASSAM
PO-KAJALGAON
DIST. CHIRANG
ASSA

Advocate for the Petitioner : MR R KARIM

Advocate for the Respondent : SC, F.T

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER

30.11.2023

(M. Thakuria, J)

Heard Mr. R. Karim, learned counsel for the petitioner and Ms. J. Sarma, learned CGC for the respondent No. 1. Also heard Mr. J. Payeng learned Standing counsel, Home Department, Assam for the respondent Nos. 2 & 6; Mr. A I Ali, learned Standing counsel, Election Commission of India for the respondent No. 3 as well as Mr. H. K. Hazarika, learned Government Advocate, Assam for the respondent No. 7.

2. This application is filed under Section 226 of the Constitution of India

praying for setting aside the impugned Judgment and Order dated 24.01.2018 passed by the learned Member, Foreigners' Tribunal, Chirang in Case No. BNGN/FT/ CHR/ 1192 /2009, wherein, the petitioner was declared to be an illegal immigrant from Bangladesh having entered into Indian Territory post 25.03.1971.

3. In pursuant to the reference No.IM(D)T799/2004, a case under the Foreigners' Tribunal Act, 1946 was registered before the learned Foreigner's Tribunal Bongaigaon, but, after the establishment of the Foreigners' Tribunal, Chirang, the matter was transferred to Foreigners' Tribunal, Chirang and registered as Case No. BNGN/FT/CHR/1192/2009. After registration of the case, summons were issued on 20.07.2017 and after appearance, the petitioner filed his written statement on 07.12.2017 along with 3(three) numbers of documents to prove his Indian nationality. One land document was annexed as Annexure-1 in which the name of the grandfather of the petitioner was recorded as riot and Anexure-2 is the certified copy of the voter's list of the year 1979 showing the name of the petitioner and his father. The petitioner also annexed the voters' list of 1997 showing his name as Annexure-3 along with the written statement.

4. After filing of the written statement along with the documents, the petitioner was not given any opportunity to adduce evidence and other supporting documents in support of his nationality and accordingly, the case was fixed for argument on 24.01.2018 and the impugned opinion was also passed on the same day holding the petitioner to be a foreigner who entered into India on or after 25.03.1971.

5. It is further submitted by the learned counsel, Mr. R. Karim that the petitioner's grandfather Baser Sk was known as Md. Molabi. The word "Molabi" is not a name, but a prefix title conferred to a person after completion of full

studies in a Madrassa or Darul Uloom. Hence, the grandfather of the petitioner was Md. Molabi Baser Sk and his name appeared as Md. Molabi in some his documents. Md. Molabi @ Baser Sk was a riot and possessed 1 Bigha of Government land and the same was reflected in the land records which was annexed by the petitioner.

6. Further, the father of the petitioner namely Fajar Ali @ Fajar Munshi was also an Indian citizen by birth and was the resident of village Kalyanpur under Balijana Revenue Circle, District Goalpara and was a voter of 38 No. West Goalpara, Legislative Assembly council.

7. It is also submitted that after marriage, the present petitioner shifted to village Nepalpara with his wife in search of work and since then, he was residing there. He is also known by 2(two) names, i.e. Md. Barkat Ali and Barkat Munshi. But, the learned Member Foreigners' Tribunal had passed the order hurriedly, without giving any opportunity of adducing evidence to prove his Indian nationality.

8. He further submits that the learned Tribunal had not considered the plea taken by the petitioner in his written statement as well as the documents relied by him, and passed the order arbitrarily without giving any opportunity of hearing to the present petitioner, though, he had sufficient evidence to prove his Indian nationality and to discharge his burden under Section 9 of the Foreigners' Act, 1946.

9. Being highly aggrieved and dissatisfied with the order passed by the learned Member, Foreigners' Tribunal, Chirang in Case No. BNGN/ FT/ CHR/ 1192 /2009, the petitioner has preferred this instant petition praying for setting aside the order/opinion dated 24.01.2018.

10. In this context, Mr. J. Payeng learned Standing counsel, Home Department, Assam has submitted that no irregularity or illegality has been committed by the learned Member, Foreigners' Tribunal, Chirang while passing the order/opinion dated 24.01.2018. He also submits that the learned Tribunal had given sufficient opportunity to the petitioner to file documents and evidence. But, even after sufficient opportunity given to him after filing his written statement, the petitioner did not appear before the learned Tribunal and hence, finding no alternative the said Tribunal had fixed the matter on 24.01.2018 as a last chance for adducing evidence. However, the petitioner failed to appear before the learned Tribunal on the fixed date and hence, the order was passed *ex-parte* in absence of the petitioner considering his written statement and the documents relied by the petitioner. Thus, the learned Tribunal has committed no error or mistake while passing the order/opinion dated 24.01.2018 and the petitioner failed to adduce the evidence as well as document before the learned Tribunal in spite of giving several chances to him.

11. Further, Mr. J. Payeng learned Standing counsel for the respondents has submitted that the documents which were relied by the petitioner along with written statement were not at all sufficient to prove himself to be the Indian national and he also failed to prove any linkage with his grandfather who is stated to be the citizen of India.

12. After hearing the submission made by the learned counsels of both side, I have perused the case record, and it is seen that even after receiving the notice from the learned Tribunal, the opposite party remained absent and he appeared before the learned Tribunal only on 01.09.2017 and submitted his written statement on 07.12.2017 after six dates out of which he was absent on two occasions. The learned Tribunal has given sufficient chance to the petitioner to

file his additional document, if any, and also directed to adduce the evidence. But, despite of several chances given to the petitioner, i.e on 16.12.2017, 27.12.2017, 17.01.2018 and 18.01.2018, he failed to appear before the learned Tribunal. Finding no other alternative, finally, on 18.01.2018 considering the absence of the petitioner fixed the matter on 24.01.2018. Even on 24.01.2018 petitioner remained absent. As such on 24.01.2018 the order/opinion has been passed ex-parte wherein, the petitioner has been declared as foreign national and it has been held that he has failed to discharge his burden under Section 9 of the Foreigners' Act, 1946 to prove himself to be the Indian citizen.

13. It is also seen that in his written statement filed on 07.12.2017 the petitioner relied upon 3(three) documents which were annexed as Annexure Nos. 1, 2 & 3. The Annexure-1 is the land document which was issued in the name of one Md. Molabi S/o Lt. Kinu Mulla, Village Senikhua. But, the land where Rioti Khatian was issued to Md. Molabi is from South Solmara, village Ghinimari and there is no explanation as to how a person from Senikhua village obtained a Khatian of village Ghinimari, South Solmara. It is only a statement made by the petitioner that Md. Molabi, who was the landholder or Khatian holder was his grandfather, who is also known as Baser SK. But, except the statement made by him, there is no evidence or any explanation in support of his plea that Md. Molabi is also known as Baser SK.

14. Further, it is the case of the petitioner that he shifted to Nelpalpara after his marriage in search of work and resided there. And his parents were residing at Kalyanpur, Balijana Circle, District Goalpara, in support of this he also produced one voter list of the year 1979 where the name of the present petitioner has appeared along with one Faser Ali and Isaron Nessa who are claimed to be his parents. Faser Ali, the projected father of the petitioner is as

shown as the son of one Baser Sk without any supporting document that said Baser Sk is also known as Md. Molabi.

15. Further, it is seen that the Said Md. Molabi is the resident of Village Senikhua and he is not the resident of village Kalyanpur and the Khatian was issued from the village Ghinimari, South Solmara, whereas, the name of his parents has appeared in the voter's list of 1979 from the village Kalyanpur and not from village Senikhua. He also relied on another voter list of 1997 wherein, the name of the petitioner is shown along with his wife. Thus, it is seen that the petitioner has neither produced any evidence or documents prior to the year 1971 or he could prove any linkage with his projected father and the grandfather who is claimed to be Ryoti Khatian holder of village Ghinimari, South Solmara.

16. Thus, it is seen that the proceedee could not produce any document to prove his linkage with his parents or grandfather nor could produce any document or Voter list prior to 1971. Two voter lists, which are being produced by him, are of the years 1979 and 1977 and there is no other document to establish himself to be the Indian citizen and thus he failed to discharge his burden under Section 9 of the Foreigners' Act, 1946 to prove himself to be the Indian citizen.

17. We find that the Tribunal has correctly appreciated the entire facts of the case and arrived at a correct decision holding the petitioner to be a foreigner of post 1971 stream. Accordingly, we find that there is no perversity in the impugned opinion/judgment dated 24.01.2018 passed by the learned Member Foreigners' Tribunal, Chirang in Case No. BNGN/FT/CHR/1192/2009. Therefore, present writ petition, being devoid of merit, stands dismissed and disposed of, accordingly.

18. The interim order passed earlier on 11.04.2018 stands vacated/hereby recalled.

19. Registry shall return the records of Case No. BNGN/FT/CHR/1192/2009 to the Foreigners' Tribunal, Chirang along with a copy of this order.

20. Registry shall also forward a copy of this order to the Superintendent of Police (Border) Chirang, Kajalgaon for its information.

JUDGE

JUDGE

Comparing Assistant