

GAHC010103412022



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

Case No. : WP(C)/3651/2022

RAJIB BHATTACHARJEE
S/O- LT. PRANAB RANJAN BHATTACHARJEE, R/O- MARGHERITA TOWN,
WARD NO. 2, P.S. MARGHERITA, DIST. TINSUKIA, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI-110001.

2:STATE OF ASSAM
REPRESENTED BY THE L.R. CUM COMMISSIONER AND SECRETARY TO
GOVERNMENT OF ASSAM, HOME DEPARTMENT
DISPUR, GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI- 110001.

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZEN (NRC)
ASYUT PLAZA, BHANGAGARH
GUWAHATI- 781005, DIST. KAMRUP(M), ASSAM.

5:THE DEPUTY COMMISSIONER
TINSUKIA, DIST. TINSUKIA, ASSAM.

6:THE SUPERINTENDENT OF POLICE (B)
DIBRUGARH, DIST.- DIBRUGARH, ASSAM.

7:THE SUPERINTENDENT OF POLICE (B)
TINSUKIA, DIST. TINSUKIA, ASSAM

Advocate for the Petitioner : MS P AGARWAL

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

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 09.01.2023
(N.KOTISWAR SINGH,J)

Heard Ms. P. Agarwal, learned counsel for the petitioner. Also heard Mr. G. Sarma learned CGC, Mrs L. Devi, learned Standing Counsel, NRC, Ms. A. Verma, learned Standing counsel, Foreigners Tribunal and Ms. K. Phukan, learned Govt. Advocate.

2. Considering the nature of the case, we are inclined to take up this petition at the admission stage for final disposal. In this petition, the petitioner challenges the order dated 30.12.2019 passed by the learned Foreigners' Tribunal Tinsukia in F.T. Case No. 96/1988 (P.E No. 125/88) by which the learned Foreigners' Tribunal declined to review the earlier order passed by the learned Tribunal on the ground that there is no provision for condonation of the delay in approaching the Tribunal for review of the earlier order.

3. Before we issue the necessary direction, certain reference to the facts of the case may be appropriate. From the records it appears that the present petitioner's father, one late Pranab Ranjan Bhattacharjee was proceeded before the learned Foreigners' Tribunal, Dibrugarh in F. T. Case No. 96/1988 vide S.P Enquiry No. 125/88. In the said proceeding an ex parte order was passed on 14.11.1988 stating that though the proceedee after receiving the notice

appeared before the Tribunal on 5.10.1988 , he remained absent on subsequent dates without taking any steps resulting in the passing of the ex parte order by holding that the said OP Pranab Ranjan Bhattacharjee is a foreigner.

It is the case of the petitioner that the petitioner was unaware of the aforesaid proceeding and said Pranab Ranjan Bhattacharjee also expired on 14.5.2021.

4. It is the specific case of the petitioner that the petitioner was not aware of the ex parte order inasmuch as his father had been exercising his voting rights under 124 Margherita Legislative Assembly Constituency and cast his vote in the year, 1989, 1997, and 2019. He was also issued Voter Identity Card in the year 2013. The petitioner further contends that when he went to apply for incorporating his name in NRC by submitting all the relevant documents, he received notice from the NRC authority to appear before the Circle Officer Margherita, then only he came to know about the ex parte order passed by the learned Foreigners' Tribunal against his father, which has come in the way of his registering as a citizen. Accordingly he applied to the Foreigners' Tribunal for review of the said ex parte order dated 14.11.1988 passed against the petitioner's father.

5. Learned Tribunal however held that the said ex parte order was passed by the learned Tribunal after the proceedee therein failed to appear after receiving notice and also on the ground that since the application for review has been filed after long period of about 30(thirty) years. Accordingly, the learned Tribunal declined to entertain the application for condoning delay and accordingly dismissed the said application.

6. Perusal of the impugned order dated 14.11.1998 would show that the learned Tribunal did not give any finding as to the period when the proceedee came to Assam, which in our view would be necessary to be specified in the order, in view of the specific provision under Section 6 of the Citizenship Act 1955. The learned Tribunal merely said that "during the enquiry, the Enquiry Officer examined local persons also who stated O.P is at the present place since 1970 only. There is nothing to disbelieve the Enquiry officer. Hence I hold and declare that O.P Pranab Ranjan Bhattacharjee is a foreigner within the purview of the present law in force."

7. We have also gone through the original record. The original record indicates that the proceedee has been residing India since 1970. However, the Enquiry officer made an observation that it is ascertained that Pranab Ranjan Bhattacharjee, son of late Probodh Ranjan Bhattacharjee is suspected to be a foreigner under 1966-71 stream. If that is so, the proceedee therein namely Pranab Ranjan Bhattacharjee would be entitled to register himself with the competent authority as provided under sub-Section 3 and 4 of Section 6A of the Citizenship Act, 1955. However there is no such finding by learned Foreigners Tribunal but merely held that he was a foreigner. On that count we are of the view that the earlier opinion 14.11.1988 suffers from a serious legal defects.

8. Secondly, though there has been delay of 30 years in filing the present review application by the petitioner, we are of the view that there are sufficient reasons for approaching belatedly inasmuch as the petitioner was not aware of the proceeding against his father which was decided ex parte. Further we have also observed that inspite of ex parte order, the petitioner's father had been allowed to cast vote under 124 Margherita Legislative Assembly Constituency in the year 1987,1989 as well as 2019 which indicate that the petitioner's father

Pranab Ranjan Bhattacharjee was indeed unaware of the ex parte order .

9. In the present case the petitioner is claiming that he was not aware of any such ex parte order passed against his father and we do not find any reason not to believe the petitioner, in view of the fact that the authorities had been allowing the petitioner's father to cast vote in the year 1987, 1989 as well as 2019, which would not have been possible, if the petitioner's father was aware that he had been in the meantime declared foreigner. Such fact indicates that the petitioner also could not have been aware that the petitioner's father was declared to be a foreigner.

10. We have also gone through the documents relied upon by the petitioner in the present case in which the petitioner has annexed a copy of NRC, 1951 wherein the name of the petitioner's father appears alongwith the other family members. The learned counsel for the petitioner has drawn our attention to the educational documents relating to the petitioner's father i.e. eligibility certificate, admit card, mark sheets which would go to show that he had appeared in the Secondary Education examination under the West Bengal Board of Secondary Education in the year, 1970. The other documents such as the voter's list of 1971 in respect of Jalpaiguri Legislative Assembly Constituency and other voter list of 1997, 1989 and 2019 reflecting the name of the proceedee makes us prima facie satisfied that the petitioner's claim that the petitioner's father was Indian cannot be said to be unfounded and accordingly, we are of the view that the petitioner may be given an opportunity to prove before the Foreigners Tribunal, Dibrugarh to show that his father was an Indian and not a foreigner.

Under circumstances we are satisfied that the petitioner can make a legitimate claim on the basis of the documents referred to above that he is an Indian but not a foreigner.

11. Accordingly, we allow this petition by setting aside the impugned order dated 30.12.2019 passed by the learned Foreigners Tribunal rejecting the application for review of the order.

We are of the view that the original order dated 14.11.1988 would be liable to be reviewed on the basis of the documents the petitioner may rely upon for which the petitioner be given another opportunity to approach the Foreigners Tribunal and file the relevant documents and also examine witnesses in support his claim that his father Pranab Ranjan Bhattacharjee was not a foreigner but an Indian.

We clarify that though the original proceedee was Pranab Ranjan Bhattachrjee by virtue of this order, the present petitioner and other family members will appear before the learned Tribunal within a period of two months from the date of order, as a legal heirs of said Pranab Ranjan Bhattachrjee and shall seek the review of the order dated 14.11.1988.

The learned Foreigners Tribunal after hearing the parties will pass a fresh opinion in accordance with law.

12. With the above observation this petition is allowed. LCR be remitted forthwith to the concerned Foreigners Tribunal.

JUDGE

JUDGE

Comparing Assistant