

GAHC010127512020



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

Case No. : WP(C)/4708/2020

SOFIUL ALI @ SOFIUR ALI @ SAPIUL ALI
S/O- LT. ANSER ALI, R/O- VILL AND P.O. NOWAGAON, P.S. MANIKPUR,
DIST.- BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH THE SECY., TO THE GOVT. OF INDIA, THE MINISTRY OF
POLITICAL AND HOME AFFAIRS, GRIHA MANTRALAYA, NEW DELHI

2:THE STATE OF ASSAM
THROUGH- THE SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

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

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GHY

5:THE DY. COMMISSIONER
BONGAIGAON
P.O. BONGAIGAON
DIST.- BONGAIGAON

ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
P.O. BONGAIGAON
DIST.- BONGAIGAON
ASSA

Advocate for the Petitioner : MR. S C BISWAS

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

O R D E R

27.06.2023

(A.M. Bujor Barua, J)

Heard Mr. FA Hasan, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioner Sofiul Ali @ Sofiur Ali @ Sapiul Ali had been referred to the Foreigners Tribunal No. 1, Bongaigaon for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No.BNGN/FT-165/2009.

3. In course of the proceeding, the petitioner submitted a petition bearing No. 1668/2020 seeking certain amendments in the written statement filed before the Tribunal. The amendments sought for is available at paragraph 5 of

the petitioner, which is extracted as below:-

“(i) The instant case has been registered in the name of one, Md. Sabiul Miya. S/o Late Anser Ali, but the actual name of the Opp. Party is Safiur Ali @ Safiul Ali. S/o Late Amser Ali @ Anser Ali. And all the documents, the name of the Opp. party have been recorded as Safiur Ali @ Safiul Ali. So in this stage a police enquiry shall be needed to arrive a conclusion regarding the actual name of the Opp. party.

(ii) That, the earlier engaged advocate could not give the family history or family details or family tree of the Opp. party, while submitting the written statement and affidavit of evidence and even did not disclose the mother name of the Opp. party, though the mother and the Opp. party has been living under the same roof and mess.

(iii) That, the Opp. party has possessed a lot of documents to prove his nationality from the period of 1960 to 2017 viz. Sale Deed, Voter list of parents and grandparents of 1966, 1971 but none of documents has been submitted before this Tribunal by the earlier engaged advocate.

(iv) That, the Opp. party has also possessed a few documents of his maternal grandfather and the same was not submitted before this Tribunal.

(v) That, the earlier engaged advocate had also not submitted any list of witnesses from the side of Opp. party for adducing any relevant evidence to prove the nationality of the Opp. party.”

4. The Tribunal while considering the said petition by its order dated 12.03.2020, had accepted the amendment as regards point No. (i) and (ii), but rejected the points No. (iii), (iv) and (v).

5. Point No. (iii) is that the petitioner had possessed a lot of documents to prove his citizenship pertaining to the period from 1960 to 1970, namely, certain sale deed, voters list of parents, grandparents of 1966, 1971 etc. Point No. (iv) was that the petitioner also possessed a few documents of his maternal grandfather which was not submitted earlier and the point No. (v) raises an issue that the earlier learned counsel engaged by the petitioner had not submitted any list of witness.

6. Under section 9 of the Foreigners Act, 1946, the burden of proof that the proceedee is not a foreigner is based on the person itself and for the purpose he/she should be allowed to rely upon any document admissible in law to prove his citizenship. In course thereof, as per point No. (iii) the petitioner intends to rely upon certain documents being sale deed, voters list of parents and grandparents etc from the period 1960 to 1970. We see no reason as to why the petitioner should not be allowed to rely upon any such documents, if otherwise such documents would be admissible in law.

7. As regards point No. (iv), as it was vague to the extent that it mentions about the few documents without specifying thereof, we required the learned counsel for the petitioner to produce the list of documents or materials to be included in point No. (iv), which is provided to the Court and the same is extracted below:-

- “1) Voter List of 1966 the name of the grandfather late Sayad Ali and grandmother late Haleman Nessa (Annexure-1) Page-16 of W.P*
- 2) Registered sale deed dated 29/11/1960 in the name of the Grandfather of the petitioner namely Sayad Ali miyya (Annexure-2) Page-18 of the W.P*
- 3) Voter List of 1971 the name of the grandfather of the petitioner Sayad Ali, Father Anser Ali and Mother Surjya Bhanu Nessa (Annexure-3) Page -23 of the W.P*
- 4) Voter List of 1997 the name of the Father and mother Anser Ali and Surjya Bhanu (Annexure -6) Page-28 of the W.P*
- 5) Voter List of 2010 the name of the mother Surjya Bhanu (Annexure-7) Page-30 of the W.P*
- 6) Voter ID of the mother of the Petitioner namely Surja Bhanu Begum, W/o – Anser Ali (Annexure-7) Page- 31 of the W.P*
- 7) Ration Card of the mother of the Petitioner namely Surja Bhanu Bewa, (Annexure -9) Page-33 of the W.P*
- 8) School Certificate of the petitioner (Annexure-10) Page No.35-36 of the W.P.”*

8. The documents mentioned therein also may be the relevant documents for

the petitioner to prove that he is not a foreigner. As such, we see no reason as to why the petitioner should not be allowed to rely upon such document.

9. Point No. (v) is regarding providing a list of witness of the petitioner, which again is a requirement of the petitioner to prove his citizenship. From such point of view, we are unable to agree with the order of the Tribunal dated 12.03.2020, whereby the amendments sought for in the written statement provided in points No. (iii), (iv) and (v) as extracted above was rejected.

10. Accordingly, the Tribunal may allow the petitioner to rely upon any such document, but whatever document is relied upon shall be subjected to the maintainability and acceptability of such documents under law and it is not to be construed that by allowing the petitioner to rely upon such document, it is also to be construed that the same documents are also acceptable to the Tribunal without examining the acceptability of such documents.

11. Accordingly, the order dated 12.03.2020 is set aside and the Tribunal may allow the petitioner to rely upon any such further documents which he intends to rely upon including the list of witnesses, but subject to the acceptability of such witness or such documents under the law.

12. The writ petition is allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant