

GAHC010156902018



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

Case No. : WP(C)/4766/2018

FAIJUR RAHMAN @ FAIZAR RAHMAN
S/O. MOJAMMEL HOQUE @ MOJAMEL HOQUE @ MAZAMEL HOQUE @
MOJAMMEL, TEMPORARY R/O. VILL. HAKAMA PART-V, P.S. BILASIPARA,
DIST. DHUBRI, ASSAM, PERMANENT R/O. VILL. KATAJHAR PATHAR, P.S.
BARPETA ROAD, DIST. BARPETA, ASSAM-781315.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG,
NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GHY.

3:THE DY. COMMISSIONER

DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM

4:THE SUPDT. OF POLICE (B)

DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM

5:THE ELECTION COMMISSIONER OF INDIA

THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI-01.

6:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHATI-05

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 ROBIN PHUKAN

JUDGMENT & ORDER (ORAL)

Date : 12-05-2023

(A.M. Bujor Barua, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Mr. N.K. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Dhubri and Mr. A.I. Ali, learned counsel for the

respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Faijur Rahman @ Faizar Rahman was referred to the Foreigners' Tribunal No. 7, Dhubri at Bilasipara for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T. 7th Dhubri Case No. 14/BLP/18 corresponding to F.T. Case No. 1717/BLP/11 was registered. The Tribunal rendered its opinion dated 28.06.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Katajhar Pathar, Mouza Gobardhana in the present Barpeta district which contains the names of Afsar Ali Sarkar son of Rafatulla at Sl. No. 266, Rohila Khatun son of Afsar at Sl. No. 267 and Mazamel Hoque son of Afsar at Sl. No. 272. It is claimed that Afsar Ali Sarkar is the grandfather, Rohila Khatun is the grandmother and Mazamel Hoque is the father of the petitioner and all of them are shown to be residing in the same house No. 79. The petitioner also relies upon the voters' list of 1970 of village Katajhar Pathar, Mouza Gobardhana in the present Barpeta district which also contains the aforesaid information except that Mazamel Hoque has now been named as Tazamel Hoque while remaining the son of Afsar staying in the same house as Afsar Ali Sarkar and Rohila Khatun. The petitioner thereupon relies upon the voters' list of 1997 of village Katajhar Pathar, Mouza Gobardhana in the Barpeta district which contains the name of Mazammel Hoque son of Afsar at Sl. No. 614 and that of Faijur Rahman son of Mazammel at Sl. No. 620 and both are shown to be residing in the same house No. 216. It is accordingly claimed that the burden under Section 9 of the Foreigners Act, 1946 had been discharged by the petitioner to prove that he is

an Indian citizen, inasmuch as, the names of Afsar Ali Sarkar the grandfather and Mazamel Hoque the father appear in the same voters' list of 1965 of village Katajhar Pathar and both are shown to be residing in the same house No. 79 and that the voters' list of 1997 of village Katajhar Pathar contains the name of Mazammel Hoque son of Afsar and Faijur Rahman son of Mazammel and both are shown to be residing in the same house No. 216.

4. We have also verified the records which contain the photocopies of the certified copies of the aforesaid voters' lists with an endorsement that the original certified copies had been produced and the contents thereof had been proved before the Tribunal. In the opinion of the Tribunal dated 28.06.2018 the voters' lists of 1965, 1970 and 1997 which were exhibited as Exhibits D, E and F respectively, had been discarded by referring to some oral evidence of DW4 who is supposed to be an official appearing on behalf of the Circle Officer and as the voters' lists produced by the DW4 were unacceptable to the Tribunal, the contents of Exhibits D, E and F could not be compared with the originals.

5. We are not expressing any view on the authenticity of the authorization by the Circle Officer to DW4 but what we take note is that the Exhibits D, E and F were produced as certified copies of the referred voters' lists of 1965, 1970 and 1997. Section 63 of the Evidence Act, 1872 provides that secondary evidence means and includes certified copies given under the provisions contained therein while Section 76 provides that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall

be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

6. The photocopies of the voters' lists of 1965, 1970 and 1997 available on record reveal that it contains the subscription of the officer namely the Electoral Registration Officer who is also the custodian of voters' lists and it is provided in a folio containing the stamps etc., which indicates that the payment on demand of the legal fees had also been paid for. The photocopies of the aforesaid voters' lists available on record also provide an endorsement of the Member of the Tribunal that it had been proved in original meaning thereby, that the original certified copies had been produced before the Tribunal, the Member had compared the contents thereof in the photocopies produced and on being satisfied, the originals were returned back to the proceedee while retaining the photocopies with an endorsement that it was proved in original.

7. Section 77 of the Evidence Act, 1872 provides that that certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

8. In the instant case, as the original certified copy had been produced before the Tribunal and the Tribunal had compared the contents thereof with the photocopies produced and retained by it, while returning back the original certified copy, we are of the view that the Exhibits D, E and F voters' lists of 1965, 1970 and 1997 are certified copies and therefore would be acceptable as secondary evidence to prove the contents thereof.

9. In a situation where the provisions of the Evidence Act, 1872 are clear enough as to the evidentiary value of the contents of a certified copy being produced before the Court, we do not find any reason as to why the Tribunal had ventured to some evidence of DW4, required him to again compare the

contents of the certified copies by bringing the originals and reject the same merely because the Tribunal had some doubts on the authorization letter carried by the DW4 from the Circle Officer. Consequently, we are of the view that the reasoning of the Tribunal is unacceptable and contrary to the provisions of law particularly to the provisions of Sections 63, 76 and 77 of the Evidence Act, 1872.

10. Accordingly, the rejection of the aforesaid documents by the Tribunal in its opinion dated 28.06.2018 in F.T. 7th Dhubri Case No. 14/BLP/18 corresponding to F.T. Case No. 1717/BLP/11 is set aside and the matter is remanded back to the Tribunal to examine the evidentiary value of the voters' lists of 1965, 1970 and 1997 relied upon by the petitioner. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Dhubri may also make their own verification as to whether Faijur Rahman of the voters' list of 1997 of village Katajhar Pathar and the petitioner proceedee are one and the same person. The respondents in the Home Department of the Government of Assam may make any further enquiry or verification, as may be advised. It will also remain open to examine as to whether the Exhibits D, E and F voters' lists are certified copies or not. The petitioner may also adduce any further evidence, if so advised.

11. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 28.06.2018 in F.T. 7th Dhubri Case No. 14/BLP/18 corresponding to F.T. Case No. 1717/BLP/11 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 27.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.
Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant