

GAHC010200532017



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

Case No. : WP(C)/5171/2017

YEHI ALOM @ YAHYA ALAM
S/O MD. ABDUL MOTLEB, C/O MD. HARUDHAN ALI, R/O VILLAGE-DHAI
ALI, P.S.- SIVASAGAR, DIST. SIVASAGAR, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY MINISTRY OF HOME AFFAIRS, NEW DELHI-1

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

3:DEPUTY COMMISSIONER

JORHAT

4:SUPERINTENDENT OF POLICE BORDER
JORHA

Advocate for the Petitioner : MR.D P CHALIHA

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 11.05.2023
(AM Bujor Barua, J)

Heard Mr. DP Chaliha, learned senior counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondent no. 1 being the authorities under the Union of India, Mr. G Sarma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of the Government of Assam and Mr. TR Gogoi, learned counsel for the respondent no. 3 being the Deputy Commissioner, Jorhat.

2. The petitioner Yehi Alom @ Ehiya Alom had been referred to the Foreigners' Tribunal, Jorhat for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of Case No. FT/SVR/221/14. The Tribunal rendered an opinion/judgment dated 05.06.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the opinion dated 05.06.2017 in paragraph 13 the Tribunal had held as extracted:

“13. The deposition of all the witnesses are corroborated with each other and I have found nothing to disbelieve the deposition of the witnesses and from all the documents and discussions above it is proved that the proceedee namely Yehi Alom @ Ehiya Alom, is the son of AA. Motalib @ Abdul Motalib and said AA Motalib @ Abdul Motalib, is the son of Jamiruddin @ Jamir.”

5. A reading of paragraph 13 makes it discernable that the Tribunal was

satisfied with all aspects and that the deposition of the witnesses had been corroborated by each other and the Tribunal did not find anything to disbelieve the deposition of the witnesses and from the documents and discussions that the Tribunal had made in the said opinion/judgment it was proved that the petitioner Yehi Alom @ Ehiya Alom is the son of AA. Motalib @ Abdul Motalib and that Abdul Motalibin in turn is the son of Jamiruddin.

6. In paragraph 14 the Tribunal held as extracted:

“14. It is seen that in Ext.(1) which is a certified copy of electoral roll for the year 1966 the name of the grand mother of the proceedee i.e. Moiful Bibi and Abdul Hekim, the elder brother of the proceedee's father is recorded as voters, but the name of Abdul Motaleb i.e the father of the proceedee is not recorded as voter in the said document. The name of AA. Motaleb i.e the father of the proceedee is recorded as voter in the year 1971.

Ld. Counsel for the proceedee has submitted in his argument that the father of the proceedee was a minor in the year 1966 and therefore his name was left to enroll in the electoral roll for the year 1966. But in the Ext(2) i.e. the electoral roll for the year 1971 the age of Abdul Motalib @ AA. Motalib, is shown as 25 years. If the age of AA Motalib was 25 years in the year 1971, his age in the year 1965 would be 20 years and, accordingly said AA. Motalib, had attained his maturity to enroll his name in the electoral roll for the year 1965. But his name was not enrolled in the year 1965, which proves that he had not lived in India in the year 1965.”

7. From the conclusion of the Tribunal in paragraph 14 it is discernable that the name of Abdul Motalib did appear in the voters' list of 1971 but it did not appear in the voters' list of 1966. The Tribunal deemed it appropriate to put a question to the petitioner proceedee as to why the name of his father Abdul Motalib did not appear in the voters' list of 1966. The petitioner had given a reply that at the relevant time of 1966 he was a minor and therefore, it did not appear. Based on the answer given to the said query of the Tribunal, the Tribunal ventured into the aspect that if Abdul Motalib was 25 years in the year

1971 he would have been 20 years in 1966 and therefore, there can be no reason as to why his name was not entered in the voters' list of 1966. Accordingly, even the entry in the voters' list of 1971 of Abdul Motalib was rejected by the Tribunal.

8. Firstly, we notice that if the name of Abdul Motalib did appear in the voters' list of 1971, it by itself is conclusive that Abdul Motalib did exist in the year 1971 and therefore, he cannot be a person who entered the State of Assam from 25.03.1971. Even the calculation of the Tribunal that in the year 1966 he ought to have been 20 years if he was 25 years in the year 1971 appears to be wrong because Abdul Motalib could have been 19 years in 1966 and not 20 years. We have sought for an answer from the learned counsel for the Election Commission whether the voters' lists are maintained in such immaculate manner that the day the person attains the age of 18, his name automatically enters in the voters' list. The answer given is no and that there is a procedure that is followed for entering the name in the voters' list. If Abdul Motalib was 19 years as on 1966, and the names are not automatically entered upon attaining the age of 18 years, the question put by the Tribunal as to why his name did not appear in the voters' list of 1966 appears to be extraneous for the purpose.

9. As the question itself is extraneous, no reliance can be placed on the answer given to such extraneous question and declare a legitimate entry in the voters' list to be unacceptable.

10. In view of the above, the conclusion of the Tribunal in paragraph 14 of the opinion/judgment dated 05.06.2017 is set aside.

11. As according to the Tribunal, in respect of all other aspects, the petitioner

could discharge the burden under Section 9 of the Foreigners' Act, 1946, we accordingly declare the petitioner to be a citizen of India and also that he will be entitled to all such rights and privileges as the Indian citizen.

Writ petition stands allowed in the above terms.

JUDGE

JUDGE

Comparing Assistant