

GAHC010208192016



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

Case No. : WP(C)/6578/2016

MD. FAKHRUDDIN KHAN
S/O. LT. JARGYAL KHAN, C/O. SRI SAHINDRA SINGH, BOKAJAN TOWN,
WARD NO.6, P.O. and P.S. BOKAJAN, DIST. KARBI ANGLONG, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-01.

2:THE STATE OF ASSAM
REP. BY THE COMM. and SECY.
HOME DEPTT.
GOVT. OF ASSAM
DISPUR
GHY.-06.

3:THE DY. COMMISSIONER
DIMA HASAO DIST.
ASSAM.

4:THE SUPDT. OF POLICE
DIMA HASAO DIST.
ASSAM.

5:THE SUPDT. OF POLICE

DSB CUM FOREIGNERS REGISTRATION OFFICER KARBI ANGLONG DIST.
DIPHU
ASSAM

Advocate for the Petitioner : MR.U J SAIKIA

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

:: PRESENT ::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. U.J. Saikia, Advocate.
For the Respondents :		Ms. K. Phukan, Government Advocate. Assam. Mr. K.K. Parasar, S.C., NRC. Ms. J. Sarmah, Central Government Counsel. Mr. A. Bhuyan, S.C., Election Commission of India. Mr. J. Payeng, S.C., Foreigners' Tribunal, Assam.
Date of Hearing	:	06.08.2022.
Date of Judgment	:	30.06.2023.

JUDGMENT AND ORDER (CAV)

(Parthivjyoti Saikia, J)

Heard Mr. U.J. Saikia, learned counsel appearing for the petitioner. Also heard Ms. K. Phukan, learned Government Advocate; Mr. K.K. Parasar, learned Standing Counsel, NRC; Ms. J. Sarmah, learned Central Government Counsel; Mr. A. Bhuyan, learned Standing Counsel, Election Commission of India and Mr. J. Payeng, learned Standing Counsel, Foreigners' Tribunal, Assam.

2. This is an application under Article 226 of the Constitution of India

whereby the opinion dated 29.09.2016 passed by the learned Member, Foreigners' Tribunal, Dima Hasao District at Haflong in F.T. Case No.10/2016 is under challenge.

3. On the basis of a reference made by the competent authority, notice was issued to the petitioner to prove his Indian citizenship. The notice was served upon the petitioner and he appeared before the Tribunal and filed his written statement wherein he claimed that he was born in the year 1975 at Howraghat in the district of Nagaon and had obtained a residential permit issued to him by the Superintendent of Police, BSB, Karbi Anglong, Diphu. He claimed that his parents were Pakhtoon from Afghanistan but he could not say why his parents came to India from Afghanistan.

4. The Tribunal held that residential permit is given to a person who enters India with valid documents, like passport etc. The petitioner could not produce the passport numbers of his parents. Therefore, the Tribunal declared the petitioner to be a foreigner from Afghanistan who entered into India illegally.

5. We have considered the submissions made by the learned counsels of both sides.

6. It is an admitted fact that the petitioner is an Afghan national. The parents of the petitioner came to India from Afghanistan. The petitioner could not say when his parents actually came to India from Afghanistan. Moreover, the petitioner has not claimed to be an Indian citizen because he has substantiated his stay in India on the basis of two residential permit dated 12.03.2013 and 14.05.2016. In that way, the petitioner has actually

admitted that he is not a citizen of India.

7. The Pakhtoon community actually does not belong to Afghanistan. They belong to North-West Frontier Province of Pakistan. There was a movement for an independent Pakhtoonistan. The authorities had taken several steps to crack down such a movement and in order to avoid atrocities, many Pakhtoons came to India and settled down. Government of India issued a policy to monitor the movements of those Pakhtoons who came to India before and after introduction of the passport and visa system in October, 1952. The Government of India made certain rules requiring Pakthoons or Pathans of Pakistan to furnish their full personal particulars for the purpose of issuance of photo identity card and residential permits by Superintendent of Police or the Deputy Commissioner. The Government further directed that those who refuse to comply with those rules, are to be served with quit India notice.

8. In the case in hand, the petitioner has neither acquired Indian citizenship nor he has tried to acquire Indian citizenship. He has been living in Assam only on the basis of Residential Permit. It goes to prove that the petitioner is a foreigner within the meaning of Section 2(a) of the Foreigners' Act.

9. This Court is of the opinion that the learned Tribunal has correctly arrived at the impugned finding. We find the present writ petition to be devoid of merit and therefore stands dismissed accordingly.

Send back the LCR.

JUDGE

JUDGE

Comparing Assistant