

GAHC010264672017



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

Case No. : WP(C)/5131/2017

RANJIT DEB NATH and 2 ORS.
S/O. LT. NIKUNJA BIHARI DEB NATH,

2: PUTUL BALA DEVI

W/O. LT. NIKUNJA BIHARI DEB NATH
D/O. LT. SASHI MOHAN DEB NATH

3: APARNA DEB NATH

W/O. RANJIT DEB NATH
D/O. NRIPENDRA CHANRA NATH. VILL. DEVIPUR
LABAK GRANT DAKSHIN
P.O. SIBPUR
P.S. LAKHIPUR
DIST. CACHAR
ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
THROUGH- THE MINISTRY OF HOME AFFAIRS, GRIHA MANTRALAYA,
NEW DELHI.

2:THE STATE OF ASSAM
THROUGH- THE SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

3:THE DY. COMMISSIONER
CACHAR

P.O. AND DIST. CACHAR
ASSAM.

4:THE SUPERINTENDENT OF POLICE BORDER CACHAR

DIST. CACHAR
ASSAM

Advocates for the petitioners : Mr. R. Dhar
Mrs. R. Rongmei

Advocates for the respondents : Mr. C. S. Baruah,
For respondent No. 1

Mr. H. K. Hazarika,
For respondent Nos. 1 & 2

Mr. J. Payeng,
For respondent No. 4

:::BEFORE:::
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Date of Judgment & Order : **14.11.2023**

JUDGMENT & ORDER (ORAL)

(M. Thakuria, J)

Heard Mr. R. Dhar, learned counsel for the petitioner. Also heard Mr. C. S. Baruah, learned CGC representing respondent No. 1; Mr. H. K. Hazarika, learned Government Advocate for the respondent Nos. 1 & 2; and Mr. J. Payeng, learned Standing Counsel, Home and Political Department, Assam, representing

respondent No. 4.

2. This writ petition is filed by 3 (three) petitioners, namely, (i) Shri Ranjit Deb Nath, S/o Lt. Nikunja Bihari Deb Nath, (ii) Putul Bala Devi, W/o Lt. Nikunja Bihari Deb Nath, & (iii) Aparna Deb Nath, W/o Ranji Deb Nath. The petitioner No. 2 is the mother of the petitioner No. 1 and the petitioner No. 3 is stated to be the wife of the petitioner No. 1. However, the petitioner No. 1 only contested the F.T. Case, being F.T. 5th/47/2016, before the learned Member, Foreigners' Tribunal 5th Silchar, Cachar by filing his Written Statement. But there is no other document produced by the petitioner Nos. 2 & 3 to show that the reference was also made against them.

3. The brief facts of the case is that in pursuant to a Reference received from Superintendent of Police, Cachar, Silchar under Rule 2 (1) of the Foreigners Tribunal Order, 1964, vide Foreigners Act Case No. 227/2012, before the learned Member, Foreigners' Tribunal 5th Silchar, Cachar, a case has been registered as F.T. 5th/47/2016. After registration of the case, notice was accordingly issued to the proceedee/petitioner No. 1- Shri Ranjit Deb Nath, S/o Lt. Nikunja Bihari Deb Nath. Accordingly, the petitioner No. 1 appeared before the Tribunal and contested the case by filing his Written Statement and also adduced evidence along with the supported documents. It is the claim of the petitioner No. 1 that he is a citizen of India by birth and was born in the year 1986 and is a permanent resident of village Devipur under P.S.- Lakhipur, District. – Cachar, Assam and the name of his father appeared in the Voters List of 1966 & 1970 of

No. 15th Election Circle of Village Labak Grant, P.S. Lakhipur, District Cachar, Assam.

4. From the records of the case it is seen that reference was made only against the petitioner No. 1 and not against the other two petitioners. Moreover, it is the petitioner No. 1 only contested the matter by filing his written statement and exhibited the documents. Hence, this writ petition shall proceed only against the petitioner No. 1 and not with regard to the petitioner Nos. 2 and 3.

5. The petitioner No. 1 contended that his father also filed a petition before the Ministry of Labour, Employment and Rehabilitation, Department of Rehabilitation, vide Letter No. 1(5)/67-RE, dated 11.02.1967, and accordingly, his father was rehabilitated in India since 1967. Further it is the case of the petitioner No. 1 that his name as well as his father, mother and his wife appeared in the Voters List of 2005 under 13th Lakhipur Legislative Assembly, Village Labak Grant, P.S. Lakhipur. Thereafter also, the name of the petitioner No. 1 was also appeared in the Voters List of 2015. He accordingly exhibited the following documents before the learned Foreigners' Tribunal 5th Silchar, Cachar:

- (i) Exhibit-1, Voter List in the name of the Proceedee/petitioner No. 1 for the year 2005.
- (ii) Exhibit-2, Voter ID of the Proceedee.
- (iii) Exhibit-3, Voter List of the year 1966, wherein the name of the father of the Proceedee/petitioner No. 1 was recorded.

- (iv) Exhibit-4, Annual Khiraj Patta in the name of the father of the Proceedee/petitioner No. 1 in the year 1975 vide Patta No. 47 against Order No. SR/ITA/11/69-70/124 dated 05.09.1975.

6. Thus, it is the case of the petitioner No. 1 that the name of his father appeared in the Voter List of 1966 and the Khiraj Patta was also issued in the name of the father of the proceedee/petitioner No. 1 in the year 1975 vide Patta No. 47 against the Order No. SR/ITA/11/69-70/124 dated 05.09.1975. But the learned Member, Foreigners' Tribunal 5th Silchar, Cachar did not consider all these documents as well as the evidence adduced by the proceedee and vide its opinion/order dated 04.12.2016, declared him as a foreigner and directed to keep him in the detention camp till his deportation.

7. Mr. R. Dhar, learned counsel for the petitioners, submits that the proceedee/petitioner No. 1 produced all the relevant documents to prove himself to be the citizen of India, i.e. Exhibit-1, Voter List of the year 2005 wherein his name along with his father, mother and wife appeared; Exhibit-2, Voter ID issued in the name of the proceedee; Exhibit-3, Voter List of the year 1966, wherein the name of his father is shown; and Exhibit-4, annual Khiraj Patta issued in the name of the father of the proceedee in the year 1975 for Patta No. 47 against Order No. SR/ITA/11/69-70/124 dated 05.09.1975. But the learned Member, Foreigners' Tribunal 5th Silchar, Cachar, without considering all these vital documents, passed the impugned order/opinion in most mechanically and arbitrary manner without considering the documents and the evidence in its true perspective and thereby declared the proceedee/petitioner No. 1 as a foreigner. He further submits that inadvertently the name of the father of the

petitioner No. 1 was mentioned as Saday Debnath @ Saday Charan Debnath, but in all other documents, the name of his father is recorded as Nikunja Bihari Debnath and not as Saday Debnath @ Saday Charan Debnath. Accordingly, he submitted that the petitioner No. 1 could establish himself to be the citizen of India as required under Section 9 of the Foreigners Act, 1946.

8. In this context, Mr. J. Payeng, learned Standing Counsel, Home and Political Department, Assam, submits that the petitioner No. 1 disclosed his identity as the son of Lt. Nikunja Bihari Deb Nath, but in paragraph No. 10 of his Written Statement filed before the Tribunal, the petitioner categorically stated that the name of his father is Saday Debnath and in some documents it has been mentioned as Saday Charan Debnath. Mr. Payeng submitted that the question arises if he is the son of one Nikunja Bihari Deb Nath, then why the petitioner in his Written Statement clarified that the name of his father is Saday Charan Deb Nath. Mr. Payeng further submitted that there is no document to prove that Nikunja Bihari Deb Nath and Saday Charan Debnath is the one and the same person. He stated that the proceedee/petitioner No. 1 could produce only one Voter List of year 2005, wherein his name is claimed to have been appeared along with his projected father and his wife, but, there is no any link document to prove that the person whose name appeared in the Voter List of the year 2005, i.e. Nikunja Bihari Deb Nath, and the Saday Charan Debnath is the one and the same person and that the present petitioner is the son of Nikunja Bihari Deb Nath @ Saday Charan Deb Nath. Accordingly, Mr. Payeng submitted that the learned Member, Foreigners' Tribunal 5th Silchar, Cachar committed no irregularity or mistake while passing the impugned order/opinion

dated 04.12.2016, in said F.T. 5th/47/2016 calling for any interference by this Court.

9. Heard the submissions made by the learned counsels for both sides and have also perused the original case record of F.T. 5th/47/2016 as well as the annexures filed along with the petition. It is the claim of the petitioner No. 1 that the names of his projected father, i.e. Nikunja Bihari Deb Nath, along with his mother and wife, are reflected in the Voter List of 2005 (Exhibit-1). In the same time, it is also the claim of the petitioner that the annual Khiraj Patta was also issued in the name of his father- Nikunja Bihari Deb Nath in the year 1975 vide order dated 05.09.1975. However, inadvertently in paragraph No. 10 of the Written Statement, the name of his father is mentioned as Saday Debnath @ Saday Charan Debnath, though he claimed himself to be the son of one Nikunja Bihari Debnath. But the question arises if the name of his father is wrongly mentioned as Saday Debnath @ Saday Charan Debnath then why he made such explanation in Paragraph No. 10 of the Written Statement. Moreso, it is seen that as per Exhibit-3, the name of one Shashimohan Debnath, S/o Nimaicharan Debnath, is reflected in the Voter List of the year 1966. But, there is no explanation as to how Shashimohan Debnath is related to the petitioner No. 1. Further, in one hand, it is claimed that the name of father of the petitioner No. 1 is shown in the Voter List of 1966, but in the same time, another plea is taken by him that his father was rehabilitated vide order dated 17.02.1967. Thus, if a person is declared as a citizen or rehabilitated in the year 1967, who was displaced from East Pakistan, then how the name of the same person can be reflected in the Voter List of 1966? Thus, reasonable doubt arises regarding the

authenticity of the documents submitted by the petitioner No. 1 before the learned Member, Foreigners' Tribunal 5th Silchar, Cachar, so as to claim his nationality.

10. Further it is seen that though the petitioner No. 1 exhibited 4 (four) numbers of documents in support of his case, but reasonable doubt arises regarding the authenticity of those documents and there is no proper link document produced by the petitioner to prove himself to be the son of Lt. Nikunja Bihari Deb Nath as he also claimed himself to be the son of Saday Debnath @ Saday Charan Debnath. He not only made explanation in paragraph No. 10 of his Written Statement that the Saday Debnath and Saday Charan Debnath is one and the same person, but the similar explanation is also made in his affidavit-in-evidence. He may have made a mistake in his Written Statement showing the name of his father as Saday Debnath @ Saday Charan Debnath, but he could not commit the same mistake while adducing his evidence claiming himself to be the son of Saday Debnath @ Saday Charan Debnath. Accordingly, the petitioner could not prove that Nikunja Bihari Deb Nath and Saday Debnath @ Saday Charan Debnath is one and the same person, though he claimed himself to be the son of Lt. Nikunja Bihari Deb Nath.

11. Thus, it is seen that the proceedee/petitioner No. 1 could not produce any document to prove his linkage with his projected father and also could not produce any document to establish himself to be an Indian Citizen and failed to discharge his burden under Section 9 of the Foreigners' Act, 1946.

12. In view of above, we find that the learned Member, Foreigners' Tribunal 5th Silchar, Cachar has rightly passed the impugned opinion/order and arrived at a just and correct decision holding the petitioner No. 1 to be a foreigner. Accordingly, we find that there is no perversity in the impugned opinion/order dated 04.12.2016, passed by the learned Member, Foreigners' Tribunal 5th Silchar, Cachar in F.T. 5th/47/2016. Therefore, the present writ petition, being devoid of merit, stands dismissed.

13. Interim order passed earlier in this proceeding on 25.08.2017 with regard to the petitioner No. 1 stands vacated/hereby recalled.

14. Registry shall return the records of Case No. F.T. 5th/47/2016 to the Foreigners' Tribunal 5th Silchar, Cachar along with a copy of this order forthwith.

15. Registry shall also forward a copy of this order to the Superintendent of Police (Border), Cachar, Silchar forthwith for its information.

16. In terms of above, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant