

GAHC010301972019



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

Case No. : WP(C)/9115/2019

FAIZUL ISLAM
S/O- LATE RAFIQUUL ISLAM, R/O- VILL- KUMARGAON, P.S- RUPAHIHAT,
DIST- NAGAON, ASSAM

VERSUS

UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
ASSAM SECRETARIAT
DISPUR
GUWAHATI- 781006

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:OFFICE OF THE STATE COORIDNATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI- 781005
KAMRUP(M)
ASSAM

5:DEPUTY COMMISSIONER
NAGAON
P.O
P.S
DIST- NAGAON
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
P.O
P.S AND DIST- NAGAON
ASSA

Advocate for the Petitioner : MR. R PHUKAN

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE MITALI THAKURIA

15/11/2023

(M.R. Pathak, J)

Heard Mr. R Phukan, learned counsel for the petitioner and Mr. A K Dutta, learned Central Government Counsel for the respondent No. 1. Also heard Mr. A Verma, learned Standing counsel, Home Department, Assam for the respondent Nos. 2 & 6; Mr. A I Ali, learned Standing counsel, Election Commission of India for the respondent No. 3 and Mr. H K Hazarika, learned Government Advocate, Assam for the respondent No. 5.

2. Being aggrieved with the impugned order/opinion dated 01.06.2019 passed by the learned Member, Foreigners' Tribunal 3rd, Nagaon in F.T. Case No. NFT.(No. 3) (D) 910/2016 (corresponding to D/Case No. 528/1998), whereby the petitioner, Faizul Islam has been declared to be a foreigner, who had illegally entered into India (Assam) on or after 25.03.1971; he has filed this writ petition on 04.12.2019, praying amongst others to set aside and quash the impugned order dated 01.06.2019 and to allow him to adduce his evidence before the said Tribunal.

3. From the impugned order/opinion dated 01.06.2019, we have noticed that during the course of verification of voters lists of 1997 by the Local Verification Officer (LVO, in short) of 85 No.

Rupohihat Legislative Assembly Constituency, the petitioner, namely, Faizul Islam, son of Late Rafiqul Islam of Village-Kumargaon under Rupohihat Police Station, District-Nagaon, Assam failed to produce relevant documents regarding his citizenship status. Doubting his citizenship, the LVO concerned submitted his report to the Electoral Registration Officer (ERO) of said 85 No. Rupohihat LAC and the concerned ERO forwarded the matter to the Superintendent of Police (Border), Nagaon. On the basis of the said report of the LVO and the ERO concerned, the Superintendent of Police (Border), Nagaon vide his D-Case No. 528/1998 referred the matter to the Foreigners' Tribunal to determine the citizenship status of the petitioner as to whether he is a foreigner or not.

4. The said matter was before the Foreigners' Tribunal 1st, Nagaon, wherein it was registered as F.T. 2252/2012. After change of jurisdiction, the said reference, i.e., F.T. 2252/2012 was transferred from the Foreigners' Tribunal 1st, Nagaon to the Foreigners' Tribunal 3rd Nagaon, wherein it was registered as F.T. Case No. NFT.(No. 3) (D) 910/2016.

5. After serving of notice to the petitioner in said F.T. Case No. NFT.(No. 3)(D) 910/2016, the proceedee on 12.11.2018 filed his written statement. On the subsequent dates, he took time to file his evidence-in-chief. The petitioner on 03.01.2019 again filed a written statement in said F.T. Case No. NFT.(No. 3)(D) 910/2016. As there is no such provision to file second written statement in the same subject matter, the learned Member, Foreigners' Tribunal 3rd, Nagaon did not accept the second written statement filed by the petitioner on 03.01.2019 and rejected the same. Thereafter, the learned Tribunal granted time to the petitioner on 30.01.2019, 20.02.2019, 19.03.2019, 23.04.2019, 10.05.2019 and 01.06.2019 for submitting his evidence-in-chief. But on the said dates, the petitioner/proceedee remained absent without any step and did not submit his evidence-in-chief.

6. Under that circumstances, following the decision of a co-ordinate Bench of this Court in the case of *Amjad Sheikh Vs. Union of India* reported in *AIR 2014 Gau 44* and considering the fact that the present petitioner/proceedee failed to discharge his mandatory burden to prove himself to be not a foreigner as required under Section 9 of the Foreigners Act, 1946, the learned Member, Foreigners' Tribunal 3rd, Nagaon by the impugned order/opinion dated 01.06.2019 passed in F.T. Case No. NFT. (No.3)(D)910/2016 (corresponding to D/Case No. 528/1998) declared the petitioner to be a foreigner, who had illegally entered into the territory of India (Assam) on or after 25.03.1971 answering the reference of the Superintendent of Police (Border), Nagaon in affirmative.

7. In this writ petition, the petitioner at Para-2 admitted the fact that he failed to discharge his

burden to adduce evidence. However, he submitted that at the time of filing of his written statement, he could not obtain certain documents and stated before the Tribunal that he had already applied for the certified copy of the voters list of 1965.

8. The petitioner at Para-10 admitted that due to non-adducing of evidence before the learned Tribunal, he was declared as foreigner, but submitted that if an opportunity is provided to him to adduce his evidence he will be able to establish his citizenship.

9. At Para-6 of this writ petition, the petitioner submitted that he would rely upon the following documents to claim his Indian citizenship which are as follows:-

(i) A certified copy of voter list of the year 1965, wherein the name grandfather of the petitioner was enlisted.

(ii) A certified copy of voter list of the year 1985, wherein the name father of the petitioner was enlisted.

(iii) A certified copy of voter list of the year 1989, wherein the name father of the petitioner was enlisted.

(iv) A certified copy of voter list of the year 1997, wherein the name father of the petitioner was enlisted.

(v) A certified copy of voter list of the year 2005, wherein the name of the petitioner was enlisted.

(vi) A certified copy of the Jamabandi wherefrom it appears that the name of the father of petitioner along with brothers have been mutated over the land by way of inheritance from their father as per the mutation order dated 12.10.1974. Thereafter, from the same Jamabandi it appears that the name of petitioner has been mutated over the land by way of inheritance from their father as per the order dated 02.04.2014.

10. The petitioner has annexed voters list of 1965 reflecting the name of his projected grandfather, voters lists of 1985, 1989, 1997 reflecting the name of his projected father and voters list of 2005 reflecting his name relating to No. 85 Rupohihat LAC of Village-Kumargaon under Rupohihat Police Station, District-Nagaon, Assam.

11. The petitioner has also annexed a copy of Jamabandi relating to Patta No. 342, Dag No. 699 of Village-Kumargaon, Lot No. 2, Khatowal, Samoguri of Nagaon Sadar, wherein by an order dated 12.10.1974, the Sub-Divisional Collector mutated the name of his projected father along with others in place of his projected late grandfather which the petitioner stated to be the relevant documents that he shall rely upon before the Tribunal as mentioned at Para-6 of this writ petition.

12. Ms. Verma, learned Standing counsel, Home Department, Assam placed before the Court that the voters list of 2005 relating to No. 85 Rupohihat LAC wherein the petitioner claimed that his name figured on it, in the same, his age was shown to be of 20 years. In filing this writ petition in December, 2019, the petitioner has stated that he is of 34 years.

13. Considering both, Ms. Verma, learned Standing counsel, Home Department submitted before the Court that his date of birth should have been sometimes in the year 1985, whereas the Superintendent of Police (Border), Nagaon referred the matter to the Foreigners' Tribunal in the year 1998 and as such at that period of time, the petitioner was of 13 years and a minor which fact the petitioner did not agitate before the Foreigners' Tribunal in his written statement filed on 12.11.2018 that itself indicates the doubt about the citizenship status of the petitioner.

14. After hearing the learned counsels for the parties, we are of the opinion that the petitioner is entitled for a chance to establish his citizenship on the documents that he had already placed before the Tribunal.

15. Accordingly, this Court set asides the impugned order/opinion dated 01.06.2019 passed by the learned Member, Foreigners' Tribunal 3rd, Nagaon in F.T. Case No. NFT.(No. 3)(D) 910/2016 (corresponding to D/Case No. 528/1998). The petitioner, Faizul Islam is directed to appear before the learned Member, Foreigners' Tribunal 3rd, Nagaon on 04.12.2023 and on the said date, the petitioner shall submit his evidence-in-chief in said F.T. Case No. NFT.(No. 3)(D) 910/2016 along with the documents mentioned at para-6 above and shall remain present before the said Tribunal on the dates fixed, for an early disposal of the matter considering the fact that the reference was of the year 1998.

16. Needless to say that the learned Member, Foreigners' Tribunal 3rd, Nagaon shall dispose of the said F.T. Case No. NFT.(No.3)(D)910/2016 (corresponding to D/Case No. 528/1998) as per the law established and the time granted under the Foreigners (Tribunals) Order, 1964.

17. Petitioner shall submit a certified copy of this order before the learned Member, Foreigners'

Tribunal 3rd, Nagaon along with a copy of this writ petition including the Annexures appended thereto.

18. Registry shall forthwith communicate this order to the learned Member, Foreigners' Tribunal 3rd, Nagaon as well as Superintendent of Police (Border), Nagaon.

19. With the above observation and direction, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant