

GAHC010073042024



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 2047 of 2024

Md Sanu Ali @ Chano Ali, age 54 years,
S/o Mafijuddin Shekh @ Mafijuddin @ Mahis Ali,
Village-Balobaratuk, Ramhari Chuba,
Darrang, P.S.- Mangaldai,
District-Darrang, Assam,
Pin-784125

.....Petitioner.

-Versus-

1. The Union of India, Represented by the Secretary to the Government of India, Ministry of Home Affairs, New Delhi, Pin-110001.
2. The State of Assam, Represented by the Commissioner & Secretary to the Government of Assam, Home Department, Dispur, Guwahati-781006.
3. The Election Commission of India, New Delhi-110001.
4. The State Co-ordinator, NRC, Assam, Achyut Plaza, Bhangagarh, Guwahati-781005.

5. The Deputy Commissioner, Darrang,
Mangaldai, Assam, Pin- 784125
6. The Superintendent of Police (Border),
Darrang, Mangaldai, Assam,
Pin No. 784125.
7. The Officer-in-Charge,
Mangaldai Police Station,
Mangaldai, District-Darrang, Assam,
Pin-784125

.....Respondents.

Advocate for the petitioner: Mr. J. Ahmed

Advocates for the respondents: Ms. A. Verma,
SC, Home Department,
Mr. R. Talukdar, GA, Assam,
Mr. A. I. Ali, SC, ECI.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 30.04.2024

ORDER

(Susmita Phukan Khaund, J.)

1. Heard Mr J Ahmed, learned counsel for the petitioner and Ms A Verma, learned Standing Counsel, Home Department, for respondent Nos. 2, 6 and 7. Also heard Mr A I Ali, learned

Standing Counsel, Election Commission of India, for respondent No. 3 and Mr R Talukdar, learned Government Advocate, Assam, for the respondent No. 5.

2. The petitioner in this case is Md Sanu Ali @ Chano Ali, who has filed an application under Article 226 of the Constitution of India, praying amongst others for quashing and setting aside the Judgment and Order dated 28.04.2023, passed by the Foreigners' Tribunal 1st Mangaldai, Darrang, in FT Case No. 17 of 2021, declaring him as a foreign national.

3. The genesis of the case was that the Superintendent of Police (Border), Darrang, Mangaldai, forwarded a reference vide Reference No. SPE/58/2021, expressing doubt about the nationality of the petitioner, as he failed to produce any document in support of his nationality, during verification/enquiry.

4. The FT Case No. 17/2021 was registered and notice was issued to the petitioner on 04.09.2021 and the notice was returned with a service report on 16.09.2021, duly served by the Process Server, Rafiqul Haque, Constable (B) and Gugul Hussain, Constable (B), and endorsed by the Officer-in-Charge of Mangaldoi Sadar Police Station. When the Process Servers went to the petitioner's house, the notice could not be served as neither the petitioner nor any adult member of his family was found in his residence. The Process Servers then took the signature of a respectable person of the locality, namely, Sri M Deka, Gaonburha of Village-Balogara and pasted a copy of the notice in a conspicuous place at the last residence of the petitioner. The process was, thus, deduced to be duly served as provided under Clause-3 (5) (g) of the Foreigners (Tribunals) Order, 1964 (1964 Order, for short). As the petitioner was absent without steps on several consecutive dates and due to his failure to appear even after notice was re-issued, the FT Case No. 17/2021 against the petitioner was

heard and decided *ex-parte*.

5. It was observed by the learned Tribunal that the petitioner was absent on 20.09.2021, without steps and then the matter was fixed on 02.11.2021 for appearance and written statement. The petitioner, however, did not take any steps and remained absent on 02.11.2021, 15.12.2021, 21.01.2022, 28.02.2022, 04.04.2022, 18.05.2022, 30.06.2022, 04.08.2022, 16.09.2022, 01.11.2022 and 12.12.2022. On 12.12.2022 again, fresh notice was issued to the petitioner and the case was fixed on 18.01.2023, for service report, appearance and written statement. On 18.01.2023, as the re-issued notice was not returned, the proceeding of FT Case No. 17/2021 was again fixed for service report on 06.02.2023. On 06.02.2023, the re-issued notice was returned after service, but the petitioner remained absent. The petitioner's engaged counsel filed a petition for adjournment along with Vokatnama, stating that the petitioner could not appear before the Court as he was ailing. This prayer of the petitioner was allowed and the case was fixed on 15.02.2023 for appearance and written statement. On 15.02.2023, the petitioner appeared before the Tribunal. Through his engaged counsel, the petitioner informed the Tribunal that his father's name is Mafijuddin, mother's name is Saiman @ Sakitan, and his grandfather's name is Basir Sheikh. He has three sisters, whose names are:-

- 1) Santolla,
- 2) Gaduli, and
- 3) Mahiran.

5.1. It was further stated by the petitioner that his father, Mafijuddin, has one brother, namely, Tobora Sheikh. The petitioner stated that his wife's name is Sirmal and he has five

children, namely,

- 1) Sampa,
- 2) Arjina,
- 3) Morjina,
- 4) Siber Ali, and
- 5) Nasimuddin,

6. On a petition filed by the petitioner's engaged counsel that the petitioner could not collect some necessary documents, prayer for adjournment was allowed and the case of FT Case No. 17/2021 was fixed on 27.02.2023, for written statement.

6.1. On 27.02.2023, the petitioner was present, but his learned engaged counsel filed a petition with prayer for adjournment that the petitioner could not collect necessary documents. The prayer for adjournment was allowed and the case was fixed on 15.03.2023, for written statement.

6.2. On 15.03.2023, the petitioner was present but his learned engaged counsel again filed a petition with prayer for adjournment, stating that the petitioner could not collect the documents and the prayer for adjournment was allowed and the case was fixed on 27.03.2023, for written statement and a last opportunity was granted.

6.3. On 27.03.2023, the petitioner was present, but the petitioner's engaged counsel again filed a petition with prayer for adjournment that the petitioner could not collect necessary documents and his prayer was allowed and the case of FT Case No. 17 of 2021 was fixed on 10.04.2023, for written statement and a last chance was accorded.

6.4. On 10.04.2023, the petitioner was present and his engaged counsel filed an adjournment petition with a similar prayer and the learned Tribunal generously granted time upto 24.04.2023, for written statement as a last and final chance.

6.5. On 24.04.2023, the petitioner was present and his engaged counsel filed an adjournment petition, which was rejected. The Petition No. 137, dated 24.04.2023, was rejected due to the conduct of the petitioner, who was given a last opportunity to discharge his burden of proof as provided under Section 9 of the Foreigners Act, 1946 (Act of 1946). The case was then fixed for *ex parte* hearing on 28.04.2023.

7. On 28.04.2023, both the petitioner and his engaged counsel were absent without steps. The petitioner had failed to submit the written statement and evidence-in-chief. Having no other alternative, the reference was heard as *ex parte*. The learned Assistant Government Pleader was heard.

8. Aggrieved by the said order, the petitioner has filed this application contending, *inter alia*, that the first notice was issued to the petitioner on 08.09.2023, which was hanged in his last place of residence. The petitioner did not receive any notice and so, he could not appear on 02.11.2021, 15.12.2021, 21.01.2022, 28.03.2022, 04.04.2022, 18.05.2022, 30.06.2022, 16.09.2022, 01.11.2022 and 12.12.2022.

9. It is admitted by the petitioner that fresh notice was issued against him on 18.01.2023, asking him to appear on 06.02.2023. He has admitted that he received the second notice and he appeared along with his engaged counsel before the Tribunal, on 15.02.2023. His newly engaged counsel had also filed a Vokatnama. He submitted his information and Family Tree

through his engaged counsel, but inadvertently, the petitioner failed to mention the name of his first wife. The matter was fixed on 27.02.2023, for written statement and it is admitted by the petitioner that on several dates, including 27.02.2023, 15.03.2023, 27.03.2023 and 10.04.2023, the petitioner appeared before the learned Tribunal along with his learned engaged counsel and on the aforementioned dates, he had filed petitions with prayer for adjournment, as he could not collect the relevant documents to submit his written statement. A last chance was accorded to the petitioner on 24.04.2023. The petitioner again appeared before the learned Tribunal and vide Petition No. 137 dated 24.04.2023, he prayed for adjournment with similar prayer, which was rejected and the matter proceeded for *ex parte* hearing and the date was fixed on 28.04.2023. On 28.04.2023, the petitioner as well as his engaged counsel were absent and the case was decided *ex parte*.

10. It is contended that the petitioner could not collect the necessary Voters' Lists of 1960, 1966, 1979, 1989, 1997, 2005 and other connected Voters' Lists from the concerned office of the Election Officer of South Salmara Constituency and as such, the petitioner was unable to file his written statement and present evidence, which resulted in the *ex parte* decision of the Tribunal. It is also submitted that after relentless endeavours, the petitioner could collect the Voters' Lists of 1966 and 1979, on 17.07.2023, from the Election Office, and the Voters' Lists of 1960, 2005, 2009, 2015, 2019 and 2021 on 03.01.2024 from the ERO of South Salmara Constituency. It is further submitted that the petitioner could collect the Voters' Lists of 2018 and 2023, from the Election Office at Mangaldoi, on 17.01.2024. The Voters' Lists could be collected by the petitioner only after the pronouncement of the Judgment dated 28.04.2023.

11. It is further submitted that the authority for upgradation of NRC prepared a legacy data

on the basis of NRC of 1951 with the name of the petitioner's projected father, Mafijuddin Sheikh, Son of Basir Sheikh, bearing Legacy Data Code (Annexure-2).

12. It is submitted that the names of the grandparents and parents of the petitioner appeared in the Voters' Lists of 1960, 1966 and 1979. The petitioner's name has appeared in the Voters' List of 1989, for the first time when he was 19 years old, along with his elder brother and sister-in-law.

13. The petitioner has, however, admitted that although his parents shifted to Village-Borjhar Bagisa, his mother's name appears in the Voters' List of 1979, under 39 No. Jalasar LAC, in the District of Goalpara. The petitioner has also admitted that his name has been recorded as Chand Miah, instead of Chano Ali, in the Voters' List of 1989. The petitioner tried to obtain the Voters' List of 1997, but the authority did not furnish the same. Now, the petitioner has the Voters' List of 1997, which reflects his name along with the name of his mother and wife at Borjhar Bagisa.

14. The petitioner has submitted that he shifted to Village-Baloboratuk (Balubara) Sub-Division Mangaldoi, in the District of Darrang in the year 1999 and presently, he is residing in this village permanently. The petitioner's name is enrolled in the Voters' Lists of 2005, 2009, 2015, 2018, 2019, 2021 and 2023, in the same village. The petitioner has also annexed the sale deed marked as Annexure-15, to support his case that his father sold a plot of land measuring 2 Bighas out of 4 Bighas 1 Katha and 13 lechas, covered by Khatian No. 58, Dag No. 50 of Village-Thongpara, Sub-Registrars Office Lakhipur, in the District of Goalpara, vide Registered Deed No. 3322 dated 05.11.1971 to one Gena Bepari. The petitioner has also annexed the Aadhaar Card as Annexure 16, where his date of birth is recorded as

01.02.1970, at Village-Balobaratok, Ramhari Chuba, Darrang. His name is recorded as Chano Ali, Son of Mafijuddin Sheikh. His Elector Identity Card, marked as Annexure-17 also reflects his name as Chano Ali, Son of Mafijuddin Seikh of Village-Balobaratok.

15. It is submitted that the petitioner has sufficient documents to prove his Indian nationality, but he failed to produce the same before the Foreigners' Tribunal, and he could not submit the written statement as he was unable to acquire the documents from the authorities concerned. It is submitted that as the petitioner has a strong case to prove his nationality, the learned Tribunal ought not to have proceeded *ex parte* without accepting his written statement and declaring him as a foreign national.

16. Per contra, learned counsel for the respondent, Ms A Verma has submitted that the Voters' List of 1989 shows the name of the petitioner as Chand Miah and not as Chano Ali. It is submitted that the father's name of Chano Ali is reflected as Mahis Ali, in the Voters' List of 2005, 2009, 2015, 2018 and 2019, but in the Voters' Lists of 2021 and 2023, the petitioner Chano Ali's father's name is reflected as Mafijuddin Sheikh. Suddenly, the petitioner's name appears as Chano Ali in the Voters' List, but no explanation is provided by the petitioner regarding the discrepancies in the names of the petitioner's father and the petitioner in the different Voters' Lists. As reflected in the Voters' List of 1989, the age of the petitioner's mother appears to be two years less than the petitioner's elder brother's, Samtullah Sheikh's age.

17. There are several discrepancies in the age of the petitioner as well as the house numbers appearing in different Voters' Lists. The petitioner will be unable to prove his linkage with his projected parents as discrepancies have surfaced from the documents annexed along

with the instant petition. As the petitioner had collected all the documents from various places in his endeavour to somehow establish his legacy with his projected parents, the petitioner was unable to submit the documents within the specified time to prove his case, despite the fact that he was granted sufficient time to submit his written statement and the documents purported to be relied upon by him.

18. We have given our thoughtful consideration to the submissions at the bar.

19. The Tribunal's opinion clearly reveals the petitioner's conduct. It cannot be ignored that ample of opportunity was accorded to the petitioner to discharge his burden as per Section 9 of the Act of 1946, but the petitioner could not submit his documents as well as his written statement within the specified time. The conduct of the petitioner is also discernible from the observation of the Tribunal, wherein it is clear from paragraph-2 of the opinion that the notice issued against the petitioner was duly served by two constables, who pasted a copy of the notice in a conspicuous place in the last residence of the petitioner. When the notice was pasted in the last residence of the petitioner, what prevented the petitioner from taking steps and appearing before the Tribunal from 02.11.2021 to 12.12.2022. The petitioner has not assigned any valid reason why he could not appear before the Tribunal for more than a year, till notice was re-issued to him in the same address. After the notice was re-issued against him on 06.02.2023, the petitioner appeared before the Tribunal with his engaged counsel and, thereafter, he obtained several adjournments with prayer for time to submit his written statement and relevant documents purported to be relied upon by him.

20. An in-depth scrutiny of the merits of this case is not to be dealt with. The point to be pondered is whether there was wilful negligence on the part of the petitioner. After notice

was re-issued and served upon the petitioner, he had appeared along with his engaged counsel on- 15.02.2023, 27.02.2023, 15.03.2023, 27.03.2023, 10.04.2023 and 24.03.2023.

21. The petitioner continuously, after his appearance filed petitions with prayer for adjournment to submit his written statement along with his documents. A last chance was accorded to the petitioner on 10.04.2023 and 24.04.2023, but when the petitioner failed to submit his written statement and necessary documents, the matter was fixed for *ex parte* hearing on 28.04.2023.

22. It is submitted on behalf of the petitioner that the petitioner made every endeavour to obtain the necessary documents to submit his written statement, but the petitioner could not obtain the documents and time was not allowed to him to submit his documents and the matter was fixed for *ex parte* hearing. On 28.04.2023, the petitioner's counsel remained absent without steps and the matter was decided *ex parte*. It is also contended that without going through any documents, it was presumed by the Tribunal that the petitioner is a foreign national. It is true that it cannot be assumed at this stage that the petitioner's wilful negligence resulted in the laches. It has surfaced from the opinion of the Tribunal that after receipt of notice, the petitioner continuously appeared with his engaged counsel and prayed for time to submit his documents.

23. Through this instant petition, the petitioner has assigned sufficient grounds to present his case before the Tribunal.

24. Equity will prevail if one opportunity is accorded to the petitioner to present his case before the Tribunal.

25. In the wake of foregoing discussions, the petitioner is directed to appear before the Foreigners' Tribunal 1st, Mangaldai, Darrang, on 27.05.2024, and submit his written statement, along with the necessary documents.

26. The petition is allowed with cost of Rs. 3,000/- (Rupees Three Thousand Only). The petitioner is to deposit the cost to the Secretary of District Legal Services Authority, Darrang, and he is directed to appear before the Tribunal, along with the receipt of the amount paid to the DLSA, Darrang.

27. In terms of the above observations, this writ petition is disposed of.

JUDGE

JUDGE

Comparing Assistant