

GAHC010082392021



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

Case No. : WP(C)/3679/2021

MAHAMMAD ALI
S/O LATE AKBARB ALI, VILL. KAZIRANGA, PIN 782426, P.S. KACHUA, DIST.
NAGAONI, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA, DEPTT. OF HOME
AFFAIRS, NEW DELHI

2:ELECTION COMMISSION OF INDIA

NEW DELHI

3:COORDINATOR

N.R.C.
ASSAM GUWAHATI 781005

4:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECY.
HOME AND POLITICAL (B) DEPTT.
DISPUR 781006

5:THE FOREIGNERS TRIBUNAL 2ND NAGAON

ASSAM
PIN 782003

6:THE SUPERINTENDENT OF POLICE (BORDER)
NAGAON

ASSAM
PIN 782001

7:THE DEPUTY COMMISSIONER

NAGAON
ASSAM
PIN 782001

8:THE OFFICER IN CHARGE

P.S. KACHUA
DIST. NAGAON
ASSAM
PIN 78242

Advocate for the Petitioner : MR. B C DAS,

Advocate for the Respondent : ASSTT.S.G.I., SC, ECI,SC, NRC,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 27.08.2024
[K.R. Surana, J]

Heard Mr. B.C. Das, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel, Foreigners' Tribunal representing respondent Nos. 4, 5, 6 and 8; Mr. A. I. Ali, learned Standing Counsel, ECI representing respondent No.2; Mr. R. Talukdar, learned Government Advocate representing respondent No.7.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 07.12.2020 passed by the learned Foreigners' Tribunal 2nd, Nagaon in F.T. Case No. 52/2017, whereby the opinion was expressed that the petitioner was an illegal migrant of post 25.03.1971.

3. The records of the Tribunal was called for vide order dated 12.08.2021, which has been received. The said records have been perused.

4. The records revealed that the proceeding against the petitioner was registered on the basis of reference made by the Superintendent of Police (Border), Nagaon bearing S.P. reference case No. 89/2017, wherein doubt was expressed about the citizenship of the petitioner.

5. The records revealed that the petitioner has filed written statement on 01.02.2019. In the written statement, the petitioner has disclosed the names of 6 (six) brothers and 3 (three) sisters and it was specifically stated that except for the petitioner, no foreigners case is pending against any of the siblings. The petitioner has also disclosed that his father Akbar Ali was enlisted in the Voter List of 1965 and 1970 in the Samaguri Legislative Constituency in the District Nagaon and that the name of the petitioner was enlisted in the Voter List of the year 1985 and 1997 and was also disclosed that he is residing in his own landed property.

6. In his written statement, the petitioner has also disclosed that a foreigner's case was instituted in the name of Md. Fakaruddin, the elder son of Akbar Ali by F.T. Case No. 778/11 and by opinion dated 21.05.2015, he was declared to be an Indian National by the same learned Tribunal. The learned counsel for the petitioner has submitted that there was a typing error in the written statement regarding the name of father of Md. Fakaruddin. It is submitted that Md. Fakaruddin was the petitioner's elder son. Accordingly, in the evidence-on-affidavit by the petitioner as D.W.1 and by Md. Fakaruddin as D.W.3, the name of the father of Md. Fakaruddin is Mahammad Ali, i.e. the petitioner. In the written statement, 11 (eleven) annexures were referred.

7. In support of his defence of being an Indian Citizen, the petitioner had examined himself as D.W.1, one Hafijuddin, son of Alimuddin as D.W.2, Fakaruddin, as D.W.2 (sic, ought to have been D.W.3), Nur Islam as D.W.4. The witnesses examined by the petitioner were cross examined by the Assistant Government Pleader and then discharged.

8. The records reveal that the petitioner had exhibited the certified copy of jamabandi and one revenue paying receipt as Exhibit 7 and 8. However, only the certified copy of jamabandi is found on record, which was not signed by the learned Tribunal. The original land revenue paying receipt is not found available, but a photocopy of the same is available on record. However, in the opinion, the learned Tribunal has recorded the copy of the jamabandi as Exhibit No. 7 and 8. Except for the certified copy of the Voter List of 1985, which is marked as Exhibit 'ka', no other exhibits of the petitioner contain any exhibit number.

9. In the evidence-on-affidavit filed by the D.W.1, namely, Mahammad Ali, certified copy of voter-list of year 1965 is marked as Ext.1, certified copy of voter-list of 1970 is marked as Ext.2, certified copy of voter-list of 1985 is marked as Ext.3, certified copy of voter-list of 1997 is marked as Ext.4, aadhaar card of the petitioner is marked as Ext.5 (proved-in-original), PAN card of the petitioner is marked as Ext.6 (proved-in-original), certified copy of jamabandi and land revenue receipt is marked as Ext. 7 and 8, proof of residence given by two *Gaonbura* separately are marked as Ext.9 and 10 and the certified copy of the opinion dated 21.05.2015 passed by the Member, Foreigners' Tribunal 2nd, Nagaon in F.T. Case No. 778/2011 of the proceedee Md. Fakaruddin is marked as Ext.11. In his evidence on affidavit, the petitioner claims Md. Fakaruddin to be his elder son.

10. On a perusal of the opinion impugned in this writ petition, it is observed that except for referring to the voter- list of the year 1965, 1970 and 1985, which are exhibits as Ext.1, 2 and 3 respectively without reference to the exhibit numbers, there is no discussion on any of the remaining exhibit numbers 4 to 11. The opinion does not even refer to the filing of Ext.11, which is the opinion dated 21.05.2015 in the name of Md. Fakaruddin.

11. The learned Tribunal, only after discussing the voter-list of the year 1965, 1970 and 1985, discarded those Ext Nos. 1, 2 and 3 on the ground that the father of the petitioner had passed away in the year 1983. It is observed that the learned Tribunal has disbelieved the evidence of D.W.2 as reference to it was not made in the written statement.

12. In the impugned opinion the learned Tribunal has recorded a finding to the effect that the petitioner had not pleaded about his family, but on the perusal of the written statement, it is seen that petitioner has made a statement in the paragraph 13 regarding his own family consisting of 6 (six) brothers and 3 (three) sisters, further stating that only his younger brother, Nur Mahammad has expired and other brothers and sisters were alive.

13. Upon discussion of Ext. Nos. 1, 2 and 3 as indicated above, evidence of D.W.1, 2 and 4 have been discarded. The learned Tribunal has only discussed the evidence of D.W.3, namely, Fakaruddin only with regard to his staying at Kaziranga at his father's land with his brothers and sisters and there is no discussion on Ext.11, tendered by D.W.3 in his evidence, which is the opinion rendered by the same Foreigners Tribunal in F.T. Case No. 778/2011. The records also revealed that in so far as Ext.11 is concerned, Md. Fakaruddin (D.W.3) as well as the petitioner (D.W.1) were examined, but there was no cross examination on the said Ext.11.

14. In this regard, the Court is of the considered opinion that if any document is exhibited by a proceedee to defend his status as a citizen of the country, it is incumbent on the learned Tribunal to discuss the exhibited documents in the opinion. In this case there was no discussion and no reason is assigned to discard the documents exhibited by the petitioner. It may be stated that except for the voter-list of 1985, the learned Tribunal has not signed any exhibited document and there is no order-sheet to disclose the reason why the 10 out of 11 exhibited documents were not signed.

15. Accordingly, Court is of the considered opinion as the learned Tribunal has not discussed the evidentiary value of Ext. Nos. 4 to 11, for which the petitioner is found to have suffered irreparable prejudice. Accordingly, the Court is inclined to set aside the impugned opinion dated 07.12.2020 passed by the learned Foreigners' Tribunal 2nd, Nagaon in F.T. Case No. 52/2017.

16. Resultantly, the matter is remanded back for a fresh appreciation of all the evidence by the learned Tribunal and to pass an appropriate opinion in accordance with law. The Tribunal is also directed to sign all the exhibited documents.

17. The learned counsel for the petitioner has submitted that pursuant to order dated 12.08.2021, the petitioner has already appeared before the Superintendent of Police (Border), Nagaon and has taken bail, the said bail shall remain in force till the disposal of the F.T. Case No. 52/2017.

18. As the matter has been remanded for a fresh decision by the learned Foreigners' Tribunal 2nd, Nagaon, the petitioner is directed to appear before the said learned Tribunal on 25th September, 2024 and by producing a certified copy of this order, await further instructions from the said learned Tribunal.

19. The learned Standing Counsel, Foreigners' Tribunal shall also transmit a downloaded copy of this order to the concerned respondents.
20. The Registry shall return back the records of the Tribunal forthwith.
21. Accordingly, the matter is disposed of in terms as indicated above.

JUDGE

JUDGE

Comparing Assistant