

GAHC010122002017



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

Case No. : WP(C)/780/2017

ABDUL KADIR
S/O LT. HUSSAIN ALI @ HUSSAIN VILL- GORMARI TORAJAN, MOUZA-
CHARAIBAHI, P.O. and P.S. MIKIRBHETA, DIST.MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF INDIA,
HOME DEPARTMENT, NEW DLEHI-1, INDIA.

2:THE STATE OF ASSAM
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER

MORIGAON
DIST. MORIGAON
ASSAM.

4:THE SUPERINTENDENT OF POLICE B

MORIGAON
DIST. MORIGAON
ASSAM.

5:THE OFFICER-IN-CHARGE

MIKIRBHETA POLICE STATION
P.S.

MIKIRBHETA
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR.Z HAMMAD, MDE AHMED,MR.R A CHOUDHURY

Advocate for the Respondent : GA, ASSAM, ASSTT.S.G.I.

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

ORDER

10.09.2024

[S. Saikia, J]

Heard Mr. Z. Hammad, learned counsel for hte petitioner. Also heard Mr. G. Sarma, learned CGC, Mr. J. Payeng, learned Standing Counsel, FT, Mr. A.I. Ali, learned Standing Counsel, ECI and Mr. H.K. Hazarika, learned Government Advocate, Assam.

2] In this petition the petitioner, namely, Abdul Kadir has challenged the impugned opinion dated 27.04.2016 passed by the Foreigners Tribunal No.3rd, Morigaon in Case No. FT(D) 125/2015 (D/N Case No.708), declaring the petitioner as a foreigner, who entered into the territory of India (Assam) illegally after the cutoff date i.e. 25.03.1971.

3] The petitioner claims to be a resident of the district of Morigaon. The Superintendent of Police (B), Morigaon made a reference to the Foreigner's Tribunal No. 2nd, Morigaon as it was alleged that the opposite party /writ petitioner of village Garmari under Mikirbheta Police Station of Morigaon district had illegally entered into India (Assam) after 25.03.1971 and he could not produce any documents in support of his Indian citizenship at the time of

verification. A reference was initially made to the Foreigner's Tribunal no.2nd, Morigaon and subsequently, pursuant to Government notification no. MRN 8/2015/48 dated 10.08.2015, it was transferred to the Foreigner's Tribunal No.3rd, Morigaon. Pursuant to the issuance of notice, the opposite party/writ petitioner filed his written statement and adduced evidence in support of his contention that he is not a foreigner who had illegally entered into Assam post 25.03.1971. The Tribunal upon consideration of the entire matter rejected the case projected by the petitioner and answered the reference in affirmative. The Tribunal held that the petitioner is a foreigner who had entered Assam illegally after the cutoff date i.e. 25.03.1971.

4] Before the Tribunal in his written statements the opposite party/petitioner stated that he is the son of one Hussain Ali and his grandfather is one Taher Ali. It is stated that his grandfather and father casted vote in the year 1965 from no.86 Dhing LAC in the Nagaon District. It is further stated that the opposite party's father and grandfather possessed a property in Salmarabari Kismat. The opposite party exhibited as many as 6 (six) exhibits. He also examined himself as D.W. 1 in support of his contentions. In his deposition as D.W. 1, the opposite party/writ petitioner deposed that he was born and brought up in Torazan Gormari under Mikirbheta Police Station under Morigaon district. He also deposed that his father casted vote in the year 1965 and 1970 and he casted vote in the year 1993. It was further deposed that he, his grandfather and his father were all born in the same village. He also exhibited the voter list of 1965 as exhibit no.1 showing the name of Taher Ali as his projected grandfather. The voter list of 1971 was exhibited as exhibit no.2 and stated that it contained the name of his projected father, namely, Hussain Ali. The voter list of 1993 was exhibited as exhibit no.3 in which the opposite party stated that he

along with his purported father are named in the said voter list. A copy of the Jamabandi in respect of a land owned by his father and which he subsequently claimed to have inherited was also exhibited as exhibit no.4. Certificates issued by the Gaonburah of Garmari under Mikirbheta, Morigaon district and Kalmowbari Gaon Panchayat were exhibited as exhibit no.5 & exhibit no.6 respectively. During the cross-examination, the opposite party /petitioner stated that his paternal uncle expired about 5/6 years back and his father expired at around 8/9 years back. He also had a paternal uncle (elder brother of his father) and one paternal aunt, whose name he could not remember.

5] The Tribunal rejected the evidence presented by the petitioner. Voters list of 1965 and 1971 were doubted because even though the House no.52 is found in the voter lists, the centre number and part number is not indicated in the voter list of 1965 and as such, it was held that the same has not been proved beyond the reasonable doubt as required under the law. The Tribunal did not accept the deposition of the opposite party/ petitioner as it held during his cross examination that he could not remember the name of his younger paternal uncle, whose name was Rahamat nor the younger sister (aunt) of his father, whose name was Fulbanu which were already indicated in the exhibit no.4 which is the Jamabandi copy. In so far as the Exhibit-3 is concerned, the Tribunal held that in the voter list of 1993, the age of the opposite party's father, namely, Hussain Ali is shown as 58 years, wherein in 1971, his age was shown as 24. The Tribunal held that if the age is to be calculated taking the opposite party's father age as 24 years in 1971, his age would have been 46 and as such there is a difference of 12 years in his father's age. Consequently, the Tribunal declined to rely on the documents produced by the opposite party/petitioner in support of his contention. The Tribunal also held that there is no relevance of

the voter list of opposite party's father or his paternal uncle as it was stated in the cross-examination that they had expired about 8/9 years ago. The Tribunal referred to and relied upon the judgment of the Apex Court rendered in *Life Insurance Corporation of India vs. Ram Pal Singh Bisen* reported in (2010) 4 SCC 291 to hold that the contents of the documents cannot be proved by merely filing it in the Court. The reference was therefore answered in affirmative and in favour of the State.

6] We have heard the rival submissions made by the learned counsel for the parties. Pursuant to the order passed by this Court on 09.02.2017, the Tribunal's records have been called for and the same are available before the Court. The Tribunal's records have been carefully perused. The pleadings available on records have also been perused.

7] From the impugned opinion dated 27.04.2016, it is seen that the petitioner exhibited as many as 6 exhibits, which are, namely, exhibit no.1; *the voters list of 1965*, exhibit no.2; *the voter list of 1971*, exhibit no.3; *the voter list of 1993*, exhibit no.4; *Jamabandi copy in respect of the land stated to be possessed by his father*, exhibit no.5; a certificate issued by the Gaonburah of Garmari under Mikirbheta, Morigaon district and exhibit no.6; a certificate issued by the Kalmowbari Gaon Panchayat.

8] A perusal of the Tribunal records reveal that the Gaonburah certificate as well as the Gaon Panchayat certificate were exhibited and were duly acknowledged by the Tribunal in the records. The certified copy of the Jamabandi is also seen as exhibit in the record. However, except for a mere reference to the exhibits no.4, 5 & 6, namely, Jamabandi copy, certificates issued by the Gaonburah of Garmari under Mikirbheta, Morigaon district and Kalmowbari Gaon Panchayat respectively, there is no discussion by the Tribunal

in respect of its evidentiary value. There is no discussion by the Tribunal as to whether these documents can be considered sufficient to accept the contention of the opposite party/petitioner. In the event, if the Tribunal considered the exhibits no.4, 5 & 6 to be not reliable or not sufficient to support the contention of the opposite party/petitioner then such finding was required to be recorded by the Tribunal in the opinion impugned in the present writ petition.

9] In the Jamabandi copy produced by the proceedee, it reflects the name of the projected father of the opposite party/petitioner, namely, one Hussain Ali, son of one Taher Ali. Taher Ali is also projected to be the grandfather of the proceedee. Under such circumstances, whether the case projected by the proceedee that his late father Hussain Ali was in possession of land in terms of the Jamabandi produced before the Tribunal as exhibit no.4 was supported by the evidence produced was required to be discussed and a finding by the Tribunal to that effect was required to be rendered on such evidence adduced by the writ petitioner/proceedee before the Tribunal.

10] This Court is of the considered opinion that every evidence produced before the Tribunal is required to be considered and discussed by the Tribunal. What would be the conclusion arrived at by the Tribunal upon such consideration of the evidences produced by the opposite party cannot be presumed and assumed. In the absence of any such discussion on the evidences produced before the Tribunal, the opinion rendered by the Tribunal appears to this Court, to be not in conformity with the law and the procedure prescribed. Reference in this context may also be made to another co-ordinate Bench judgment in *Farida Khatun vs. The Union of India & 5 Others* reported in 2020 (4) GLT 611.

11] We are of the view that the matter deserves to be remanded to the

Tribunal for reassessment of the evidence available in the records in accordance with law including the oral testimonies of the witnesses. Thereafter, the Tribunal should give a fresh opinion as regards the citizenship status of the petitioner.

12] Accordingly, we allow this petition by setting aside the impugned opinion dated 27.04.2016 passed by the Foreigners Tribunal No.3rd, Morigaon in Case No. FT(D) 125/2015 (D/N Case No.708). The Foreigners Tribunal No.3rd, Morigaon after hearing the petitioner shall pass a fresh order in accordance with law and in terms of the observation made by us as indicated above. The petitioner shall appear before the concerned Tribunal on 03.10.2024.

13] Since the petitioner has already been granted bail by this Court on 05.06.2024, he would continue to remain on bail on similar terms and conditions till the culmination of the proceedings in FT(D) 125/2015 (D/N Case No.708) as directed above.

14] With the above observations and directions, the writ petition stands disposed of.

15] Copy of this order be furnished to the Superintendent of Police (Border), Morigaon for doing the needful.

16] Let the LCR of the Foreigners Tribunal No.3rd, Morigaon, be remitted forthwith.

JUDGE

JUDGE

Comparing Assistant