

GAHC010203702023



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

Case No. : WP(C)/5362/2023

MD. HANIF MANDAL @ HANIF ALI
S/O- MD. SAMSUL MANDAL @SAMSUL HOQUE,
R/O- VILLAGE KHETESWAR,
P.S- DALGAON (KHARUPETIA),
DIST- DARRANG, ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SASTRI BHAWAN, NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

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

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
G.S ROD.
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

5:THE SUPERINTENDENT OF POLICE (B)
DARRANG
ASSAM
PIN-78100

Advocates for the Petitioner : Mr. M. Hoque,
Mr. S. Hoque,
Mr. R. A. Choudhury.

Advocates for the Respondents : Mr. U. K. Goswami, CGC,
representing the respondent No.1.

Mr. A. I. Ali,
Standing counsel, Election Commission of India,
representing the respondent No.2.

Mr. J. Payeng,
Standing counsel, Home Department,
representing the respondent Nos.3 & 5.

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

Date of hearing : 11.12.2023

Date of Judgment : 07.03.2024

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. M. Hoque, learned counsel for the petitioner. Also heard Mr. U. K. Goswami, learned CGC for the respondent No.1; Mr. A. I. Ali, learned Standing counsel, Election Commission of India for the respondent No.2 as well as Mr. J. Payeng, learned Standing counsel, Home Department, Assam for the respondent Nos.

3 & 5.

2. This application is filed under Section 226 of the Constitution of India praying for issuance of a writ in the nature of Mandamus, Certiorari and/or any other appropriate writ, order or direction of like nature.

3. On being referred by the Superintendent of Police (Border), Darrang, Mangaldai, Assam, the learned Member, Foreigners' Tribunal No. 3rd, Darrang, Mangaldai in F.T.(3) Case No.3222/2012 (Ref. F.T. Case No.442/2007) by the impugned order/opinion dated 19.06.2023 declared the petitioner to be a foreigner under the Foreigners' Act, 1946, who had illegally entered into the territory of India (Assam) on or after 25.03.1971 without any valid document.

4. Being aggrieved and dissatisfied with the said impugned order/opinion dated 19.06.2023 passed by the learned Member, Foreigners' Tribunal No. 3rd, Darrang, Mangaldai in F.T.(3) Case No.3222/2012 (Ref. F.T. Case No.442/2007), the petitioner has filed this writ petition on 13.09.2023.

5. It is the contention of the petitioner that he is an Indian citizen by birth and a permanent resident of Village-Kheteswar, P.O.- Kharupetia, P.S.- Dalgaon (now Kharupetia), District Darrang, Assam. It is contended by the petitioner that the names of his grandparents, namely, Fatik Mandal and Shanti Nessa had appeared in the voters lists of the years 1966 and 1971 from the same Village-Kheteswar, Mouza- Pachim Sialmari, P.S.- Dalgaon, District Darrang, Part-118 and Part-116 respectively. It is also stated that in some of the voters lists and documents, the petitioner's grandfather's name has been recorded as 'Fatik Mandal' and 'Fatik' but both are same and one person. In the year 1971 his grandfather expired and as such his name did not appear in the voters list for the year 1978, but, the petitioner's grandmother's name along with his parents namely Samsul and Saleha appeared in the voters list of 1978 from the Village-Kheteswar, 1st Part, Mouza- Pachim Sialmari, P.S. Dalgaon, District Darrang. Further, the petitioner's parents' names appeared in the voters list of

1993 from the Village-Kheteswar, Part-1, Part No.97 and their names' also appeared in the voters lists of the years 1997 and 2005, respectively along with his brothers from the same village. Apart from that, the Government issued Elector Photo Identity Card, Aadhaar Card, PAN Card etc, in the name of the petitioner. Further, the Gaonburah of his locality also issued a report to the Circle Officer of Darrang circle certifying that the petitioner namely Hanif Ali, son of Samsul Hoque of Village-Kheteswar, P.S. Kharupetia, District Darrang is known to him and he lives in the same locality.

6. The learned counsel for the petitioner, Mr. M. Hoque submitted that the petitioner not only produced the Voters Lists of the years 1966 and 1971, wherein, the names of his grandparents are recorded, but also produced the subsequent Voters Lists where his own name appeared along with his parents and brothers. He also submitted that a plot of land covered by Patta No.168, Village- Kheteswar under Pachim Sialmari Mouza was mutated in the name of the petitioner's father as well as his paternal uncles after the death of his grandfather vide order dated 29.01.1990. Further, he also produced the certificate of Gaonburah as a link document, wherein, name of his father- Samsul Hoque is reflected. But, inspite of having all the relevant documents, the Foreigners' Tribunal No. 3rd, Darrang, Mangaldai had declared the petitioner as a foreigner of post 1971 stream and passed the order arbitrarily and illegally without proper appreciation of evidence as well as exhibits which the petitioner filed in support of his case.

7. He further relied on the judgment of the Hon'ble Apex Court passed in the Case of *Sarbananda Sonowal vs. Union of India & Anr. II*, reported in (2007) 1 SCC 174, wherein, the Hon'ble Apex Court had expressed the view that no genuine citizen of India should be thrown out of the country. Accordingly, he prays for setting aside and quashing of the impugned order/opinion dated 19.06.2023 passed by the learned Member, Foreigners' Tribunal No. 3rd, Darrang, Mangaldai in F.T.(3) Case No.3222/2012 (Ref. F.T. Case No.442/2007).

8. Per Contra, Mr. J. Payeng, learned Standing counsel, Home Department, Assam

has submitted that the Foreigners' Tribunal No. 3rd, Darrang, Mangaldai had rightly passed the said order by considering all the relevant documents and evidence in its true perspective and hence, there cannot be any reasons to set aside the impugned order/opinion dated 19.06.2023.

9. Mr. J. Payeng, learned Standing counsel, Home Department, Assam submits that from the copy of the Jamabandi which is annexed by the petitioner, it is seen that there were several corrections made in the Jamabandi and on the same day several transactions were shown to have been taken place. Thus, a reasonable doubt arises in the genuineness of the Jamabandi which has been relied by the petitioner. More so, from the evidence of DW-2/Akram Ali, it is seen that the present petitioner along with the DW-2 did not get any share in the land which is claimed to have been purchased by the projected father of the petitioner. In this regard, he submits that a copy of a Jamabandi cannot be a document for establishing the citizenship and it should have been supported by other document.

10. In this context, he relies on the decision of this Court passed in WP(C) No.2634/2016 (*Monowara Bewa vs. the Union of India & Ors.*), wherein, in paragraph No.10 of the said judgment it has been held that;

"10. The OP without any specific pleading in the W/S had stated in her Affidavit that her father Kashem Ali, S/o Chapatulla name was recorded in the land document of village Khagrabari Circle Dhubri, in the year 1965 and produced one land document marked as Ext-4. On perusal of the document Ext-4, the Jamabandi copy it is found that one Kashem Ali Sk, 6 WP(C) 2634 of 2016 S/o Khetaullah Peon alongwith other name appears at Khatian No. and Patta No.10 and 179 and their names have been mutated in the year 01- 09-1966 whereas the OP had stated in her affidavit that her father name was recorded in the land document in the year 1965 as Kashem Ali Sk, S/o Chapatulla whereas in the jamabandi copy Ext-4 shows that one Kashem Ali Sk, S/o Khetaullah Peon name appears alongwith

other in the year 01-09-1966 thus, the OP herself is contradicting the documents and, moreover, Kashem Ali Sk, S/o Chapatulla and Kashem Ali Sk, S/o Khetaullah Peon is altogether a different person and due to such contradiction of name in the said land document Ext-4 cannot be relied upon as trustworthy.

Furthermore, under the law of evidence, entries in the copy of the Jamabandi are prepared on fiscal inquiries and the entry in the copy of Jamabandi has to be examined on the probative value of the contents of the documents which required corroboration with other documentary evidence. The OP had not provided any explanation and failed to produce the up-to-date land revenue receipt and other documentary evidence subsequent to such entries made on fiscal inquiries and as such, the entry in the copy of the Jamabandi is inadmissible in evidence in the absence of other substantial documentary evidence.

In view of the above discussion and reason, the purported land document Ext-4 is not trustworthy and cannot be relied upon and the document is of no help to the OP to prove her case that she is not a foreigner."

11. Further, the purchased land of Fatik Mandal which is shown in the copy of Jamabandi is more than 2 bighas, but, there is no explanation regarding the purchase of the said land. The petitioner also did not mention in his written statement the name of his projected mother, siblings or when his grandfather died and the names of the siblings of his projected father and DW-2 who claimed to be his uncle.

12. Mr. Payeng, further submitted that the petitioner is not fully aware about the date of birth or date of death of his parents/grandparents to adduce any rebuttal evidence by the State. He further relied on the decision of the Hon'ble Supreme Court passed in the Case of *Sarbananda Sonowal vs. Union of India & Anr.*, reported in (2005) 5 SCC 665, and emphasized on paragraph No. 26 of the said judgment, which reads as follows:

"26. There is good and sound reason for placing the burden of proof upon the

person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grand parents may also be relevant like under [Section 6-A\(1\)\(d\)](#) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of [Section 106](#) of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

13. Mr. Payeng, learned Standing Counsel, Home Department, further submitted that the petitioner failed to establish any link with his projected grandparents and projected parents and also could not produce any document to establish himself to be an Indian Citizen and accordingly failed to discharge his burden under Section 9 of the Foreigners' Act, 1946. Hence, there is no reasons to make any interference in the impugned opinion dated 19.06.2023 passed by the Foreigners' Tribunal No. 3rd, Darrang, Mangaldai which has been passed by appreciating the evidence on record.

14. We have perused the case records as well as the exhibited documents supported by the petitioner and also heard the submissions made by the learned counsels for both sides.

15. It is the contention of the petitioner that he is an Indian citizen by birth and the name of his grandparents were reflected in the voters lists of 1966 and 1971 and his parents names were also recorded subsequently in the voters list of the year 1993 onwards and his name was also recorded in the voters lists of 2005 along with his projected mother.

16. In support of the case, the petitioner has produced/exhibited the following documents before the learned Member, Foreigners' Tribunal No. 3rd, Darrang,

Mangaldai:-

- i).** Exhibit-1 is the certified copy of the Voters List of 1966.
- ii).** Exhibit-2 is the certified copy of the Voters List of 1971.
- iii).** Exhibit-3 is the certified copy of the Voters List of 1993.
- iv).** Exhibit-4 is the certified copy of the Voters List of 2005.
- V).** Exhibit-5 is the certified copy of the Voters List of 2010.
- vi).** Copy of the sale deed as Exhibit-6.
- vii).** Copy of Jamabandi as Exhibit-7
- viii).** Copy of notice as Exhibit-8.
- ix).** Copy of electoral Idendity Car, PAN Card, Aadhaar Card as Exhibits-9, 10 & 11.
- x).** Copy of Goahbura's Certificate as Exhibit-12.
- xi).** NRC final list as Exhibit-13.

17. As per the petitioner/proceedee, he is the grandson of one Fatik Mandal and Shanti Nessa who had cast their votes in the years 1966 and 1971 from Village-Kheteswar, Part Nos. 118 and 116 respectively, but, he failed to produce any link document in connection with his projected father and projected grandparents. The names of the petitioner's projected parents appeared in the voters list of 1993 from the Village-Kheteswar, Part 97, but, it cannot be held that the person whose name has been reflected in the voters lists of 1993 i.e the projected father of the petitioner is the son of said Fatik Mandal whose name had appeared in the voters lists of 1966 and 1971 along with his wife. At the same time, the name of the petitioner/proceedee along with his parents and projected mother had reflected in the voters lists of the years 1997 and 2005 respectively. But, there is no link document to establish that the petitioner is the son of his projected mother Saleha Khatun. Further, it is seen that two other names had appeared in the voters lists of 1997 and 2005 which the petitioner claimed to be his brother, but, none of the siblings' names has been mentioned by the petitioner/proceedee in his written statement. The petitioner has not brought all the

material facts in his written statement. Thus, it is seen that there is no document at all to prove that his projected father is the son of one Fatik Mandal who is claimed to be his projected grandfather. Moreover, he also failed to produce any voters list wherein the name of his projected father appeared to establish the link with his grandparents who were claimed to be Indian citizens and cast their votes in the years 1966 and 1971, respectively.

18. It is also seen that one Akram Ali/DW-2 claimed to be the uncle of the petitioner/proceedee. But, the petitioner did not mention about the name of DW-2 as his uncle and in the same time the name of Akram Ali/DW-2 did not reflect in the Jamabandi which is exhibited by the present petitioner. In the Jamabandi, the name of Samsul Hoque, Nur Islam and Akbar have been reflected as the son of Fatik Mandal, though, he claimed himself to be the uncle of the present petitioner. Thus, his statement also cannot be considered or on the basis of his statement it cannot be held that the present petitioner is the son of one Samsul Hoque and the grandson of one Fatik Mandal. A Co-ordinate Bench of this Court in a judgment passed in WP(C) No.4020/2017 [*Asia Khatoon vs. the Union of India & Ors.*] has held that “the evidentiary value of oral testimony without support of documentary evidence is wholly insignificant. Oral testimony alone is no proof of citizenship”.

19. Further, one Goanburah certificate, which is exhibited by the petitioner as Exhibit-12, but, failed to examine the issuing authority i.e the Goanburah who issued the certificate to prove the contents of the same. The Hon’ble Supreme Court in the case of *Rupajan Begum vs. Union of India & Ors.*, reported in (2018) 1 SCC 578, in paragraph Nos. 16 & 18 thereof, has held as under:

“16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its

contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.

18. For all the aforesaid reasons we set aside the order of the High Court insofar as the invalidity of the certificate issued by the G.P. Secretary is concerned and allow the present appeals to the above limited extent. We make it clear that the certificates issued by the G.P. Secretary/Executive Magistrate will however be acted upon only to establish a linkage between the holder of such certificate and the person(s) from whom legacy is being claimed. The certificate will be put to such limited use only if the contents of the certificate are found to be established on due and proper enquiry and verification.”

20. It is also settled that, mere filing of a document does not amount to proof of the contents of the document [(2010) 4 SCC 491 (***Life Insurance Corporation of India and Anr. Vs. Ram Pal Singh Bisen***)].

21. The other documents exhibited by the petitioner i.e the Aadhaar Card, PAN Card, Voter Identity Card etc. carry no evidentiary value to prove the petitioner as a citizen of India. There is no document to prove that the petitioner is the son of the projected parents and the name of his projected mother is only reflected in the voters list of 2005. Though, the petitioner had never mentioned the name of his projected mother in his written statement and thus, there is no link document to establish that he is the son of his projected father Samsul Mandal @ Samsul Hoque. Also, there is no document to prove that his projected father is the son of his projected grandparents whose names had appeared in the voters lists of the years 1966 and 1971.

22. Thus, it is seen that the proceedee failed to prove and establish any linkage with his projected father or projected grandfather nor could he produce any document to prove his citizenship. There is no evidence that he is the grandson or son of the person whose names have been reflected in the Voters Lists of 1966 and 1971, respectively, whom he projected as his grandfather. We found that there is no other document to establish himself to be an Indian citizen and accordingly, he failed to

discharge his burden under Section 9 of the Foreigners' Act, 1946 to prove himself to be an Indian citizen.

23. In view of above, we find that the Foreigners' Tribunal No. 3rd, Darrang, Mangaldai has correctly appreciated the entire facts and evidence of the case and arrived at a correct and just decision holding the petitioner to be a foreigner of post 1971 stream. Accordingly, we find that there is no perversity or any illegality in the impugned judgment/ opinion dated 19.06.2023, passed by the Foreigners' Tribunal No. 3rd, Darrang, Mangaldai in F.T.(3) Case No.3222/2012 (Ref. F.T. Case No.442/2007) requiring any interference with it. Therefore, the present writ petition, being devoid of merit, stands dismissed.

24. The interim order passed earlier on 04.10.2023 in this proceeding stands vacated/hereby recalled.

25. Registry shall return the records of F.T.(3) Case No.3222/2012 (Ref. F.T. Case No.442/2007) to the Foreigners' Tribunal, No. 3rd, Darrang, Mangaldai, Assam forthwith along with a copy of this order.

26. Registry shall also forward a copy of this order to the Superintendent of Police (Border) of District Darrang forthwith for his information.

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

JUDGE

JUDGE

Comparing Assistant