

GAHC010231812018



2024:GAU-AS:12616

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

Case No. : WP(C)/7584/2018

JURAN ALI
S/O. LT. ABDUR RAHAMAN, R/O. VILL. BHAKUAMARI, P.S. SOUTH
SALMARA, DIST. DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, DEPTT. OF HOME, NEW
DELHI-110011.

2:THE STATE OF ASSAM

REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE SUPDT. OF POLICE (B)

DIST. DHUBRI
ASSAM-783301.

4:THE DY. COMMISSIONER

DIST. DHUBRI
ASSAM-783301.

5:THE ELECTION COMMISSIONER OF INDIA

REP. BY THE SECRETARY OF THE COMMISSION
H.Q. NEW DELHI-110011.

6:THE STATE CO-ORDINATOR

NRC
ACHYUT PLAZA
BHANGAGARH
DIST. KAMRUP (M)
GUWAHATI-05
ASSAM

Advocate for the Petitioner : MR. P C DEY, MR. I HAQUE

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

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

10.12.2024

(K. R. Surana, J.)

Heard Mr. P. C. Dey, learned counsel for the petitioner. Also heard Ms. R. Devi, learned CGC, appearing for respondent No. 1, Mr A Kalita, learned Standing Counsel for the Home Department and FT matters, representing respondent Nos. 2, 3 and 6, Mr P Sarma, learned Additional Senior Government Advocate, appearing for respondent No. 4, and Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, Standing Counsel

for the respondent No. 5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 13.08.2018, passed by the learned Member, Foreigners' Tribunal 2nd, Dhubri, in FT Case No. 564/F/15, bearing Police Reference Case No. 296/98, by which the petitioner was declared to be a foreigner of post-

25.03.1971 stream.

3. At the outset, learned Standing Counsel for the FT matters has submitted that from the various Voters Lists exhibited by the petitioner for the years 1960, 1966, 1970, 1985, 1997, 2005, 2008, 2017, the name of the father of the petitioner is constantly changing and his father's aliases are projected to be Rahman Ali, Rahman Sk, Abdur Rahman @ Abdul Rahman @ A. Rahman. Accordingly, it is submitted that the petitioner was required to prove that the petitioner, namely, Juran Ali, whose name appears in the Voters List of 1966 and 1970, is the same person, which is unbelievable, as his father's name appearing in the said Voters Lists, is constantly changing, which indicates that there are different persons in those Voters Lists. Accordingly, it is submitted that as the petitioner has failed to establish his linkage with his projected father, the opinion of the learned Tribunal warrants no interference.

4. Records as called for have been received. We have examined the records.

5. It is seen that in the written statement filed by the petitioner, the petitioner has disclosed his name and his father's name appearing in the Voters List of different years, as well as the other names appearing in the said Voters List of 1966. Similarly, the names of the family members appearing in the Voters List of 1970 are also pleaded, clarifying that his parents and elder brother had died earlier, as such their names do not appear in the Voters List of 1970. Similarly, the description of the family members whose names appear in the Voters List of 1985, 1997 etc., is also given. The written

statement contains the different names of his father. A similar assertion is found to be made in the evidence-on-affidavit filed by the petitioner in support of his case. Along with the evidence-on-affidavit, the petitioner has exhibited the following documents:-

1. Certified copy of electoral roll of 1960 (Exbt-1)
2. Certified copy of electoral roll of 1966 (Exbt-2)
3. Certified copy of electoral roll of 1970 (Exbt-3)
4. Certified copy of electoral roll of 1985 (Exbt-4)
5. Certified copy of electoral roll of 1997 (Exbt-5)
6. Certified copy of electoral roll of 2005 (Exbt-6)
7. Certified copy of electoral roll of 2008 (Exbt-7)
8. Certified copy of electoral roll of 2017 (Exbt-8)

6. It may be pertinent to state here that records also reveal that on 29.06.2018, the petitioner as DW-1, was cross-examined along with DW-2, namely, Samsul Hoque, who is stated to be the neighbour of the petitioner. There is no cross-examination with regard to the existence of the name of the petitioner in the Voters List of 1966 regarding the various aliases of his projected father.

7. We have also taken note of the fact that on 31.03.2018, the petitioner has filed Petition No. 2144, by which a prayer was made to call for a Police Verification Report as regards the actual name, identity and address of the petitioner and his father. On such petition, the learned Member, Foreigners' Tribunal 2nd, Dhubri, passed an order dated 31.03.2018, called for a Police Verification Report to ascertain whether the petitioner, namely, Juran Ali, S/o Rokman Ali of Village-Baladmara, P.S.- Fakirganj and Juran Ali, S/o Rahman Ali @ Rahman Sk @ Abdur Rahman @ Abdul Rahman @ A. Rahman, of

village Bhalukmari, P.S.- Fakirganj, are one and the same identical person as claimed, with a further direction to the Superintendent of Police (Border), Dhubri, to appoint a competent Enquiry Officer (EO, for short).

8. On the next date fixed, i.e., on 27.04.2018, the Police Verification Report was received by the learned Tribunal. The said Report is available at Page-85 of the records of the Tribunal. The ASI of Police of Fakirganj Police Station had submitted a report and after referring to the then certified copy of the electoral roll, copy of EPIC, electoral roll of 1997, legacy data of NRC 1951, electoral roll of 2018, as well as a copy of affidavit, arrived at a conclusion that Juran Ali, son of Rokman Ali of Village-Baladmara, P.S.- Fakirganj and Juran Ali, son of Rahman Ali @ Rahman Sk @ Abdur Rahman @ Abdul Rahman @ A. Rahman, of village Bhalukmari, P.S.- Fakirganj, are one and the same identical person. He has further recorded that he has found Juran Ali @ Juran Sk., are one and the same identical person and he is an Indian citizen, as per the documents. The said report by the A.S.I of Police dated 27.04.2018, was forwarded by the Officer-In-Charge, Fakirganj Police Station on 27.04.2018.

9. Although the Police Report was received and its receipt has been recorded in the order sheet dated 27.04.2018, there is no discussion by the learned Tribunal on the said report.

10. The procedure for obtaining such report is found to be covered under paragraph-4 of the Foreigners (Tribunals) Order, 1964, which provides for discovery and production

of any document. Therefore, the Court is of the considered opinion that as a report has been called for, the learned Tribunal is required to deal with the said report. Moreover, if the learned Tribunal is of the view that the said document was not proved by the petitioner (i.e., proceedee) in accordance with law, that ought to have been mentioned in the opinion.

11. Moreover, in the present case at hand, it is the case of the petitioner that his own name appears in the Voters List of 1966, which is a document purportedly showing the entry of the petitioner in the State of Assam prior to 25.03.1971. Therefore, irrespective of whether the petitioner has been able to prove various aliases of his father, the entry of his own name in the Voters List of 1966, is required to be independently dealt with by the learned Tribunal.

12. Irrespective of the fact that the Police Verification Report is received, as the said Police Verification Report has come in the record on the strength of the petition filed by the petitioner. Therefore, in the opinion of the Court, petitioner is entitled to an opportunity to prove the said Police Verification Report, as the enquiry ordered by the Tribunal was not in its own motion, but same was on the strength of the petition filed by the petitioner.

13. Therefore, Court is of the considered opinion that this is a fit case, where the matter be remanded back to the learned Tribunal, for giving an opportunity to the petitioners for proving the Police Verification Report dated 27.04.2018.

14. In view of above, the impugned opinion dated 13.08.2018, passed by learned Member, Foreigners' Tribunal 2nd, Dhubri, in Case No. F.T. Case No. 564/F/15, is set aside.

15. Resultantly, the matter is remanded back to the learned Member, Foreigners' Tribunal 2nd, Dhubri, for giving an opportunity to the petitioner to prove the Police Verification Report and, thereafter, pass a fresh opinion in accordance with law.

16. In the interest of expeditious determination by the learned Tribunal and to compel the petitioner to appear before the said learned Tribunal, Court is inclined to provide as follows:-

i) The petitioner shall appear before the Superintendent of Police (Border), Dhubri, within 15 (fifteen) days from the date of this order and shall furnish bail bond of Rs.5,000/- (Rupees Five thousand only), with one surety of the like amount to the satisfaction of the said authority.

ii) The petitioner shall appear before the learned Member, Foreigners' Tribunal 2nd, Dhubri, on or before 08.01.2025, and by producing a certified copy of this order, await further direction from the said learned Tribunal.

17. In the event the petitioner does not appear before the learned Tribunal within the date fixed, it would be open for the said learned Tribunal to presume that the petitioner is not interested to prove the above referred document and close the matter and pass a

fresh opinion in accordance with law.

18. With the above observations and directions, this writ petition stands partly allowed to the extent as indicated above.

19. Let the Tribunal's records be sent back.

JUDGE

JUDGE

Comparing Assistant