



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

WP(C) No. 8462/2018

Abdul Mazid
S/O Late Abdul Latif,
R/O Village Borjari Majgaon,
P.S. Jamunamukh,
District-Hojai, Assam-782428.

.....Petitioner

-Versus-

1. The Union of India
Represented by the Secretary to the Government
of India, Ministry of Home Affairs, New Delhi.
2. The Commissioner and Secretary to the
Government of Assam, Home Department,
Dispur Guwahati-06.
3. The Deputy Commissioner of Hojai
District Hojai, Assam-782435.
4. The Chief Election Officer,
The Election Commission of India
Nirvachan Sadan, Ashoka Road,
New Delhi, Delhi-110001.
5. The Office of the State Coordinator
National Registration (NRC) Assam
Represented by its Coordinator,
1st Floor Achyut Plaza,
Bhangagarh, Guwahati, Assam-781005.
6. The Superintendent of Police (Border), Hojai
District-Hojai Assam-782435.

7. The Officer-In-Charge,
Jamunamukh Police Station,
District-Hojai, Assam-782435

.....Respondents

For Petitioner : Mr. Gias Uddin, Advocate
For Respondent(s) : Mr. G. Sarma, SC, Home Department
Mr. P. Sharma, Sr., Govt. Advocate
Mr. T. Pegu, SC, ECI

Date of Judgment : **20.09.2024**

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

(MRIDUL KUMAR KALITA, J)

1. Heard Mr. Gias Uddin, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel for the Home Department, Assam for the respondent Nos. 2, 6 and 7; Mr. P Sharma, learned Senior Government Advocate, Assam for the respondent No. 3, as well as Mr. T. Pegu, learned Standing Counsel, Election Commission of India for the respondent No. 4.
2. This Writ Petition, under Article 226 of the Constitution of India, has been filed by the petitioner, namely, Md. Abdul Mazid, son of Abdul Latif, impugning the opinion/order dated 03.07.2018 passed by the learned Foreigners Tribunal, Nagaon No. 10th, Shankardev Nagar, Hojai in FT(D) Case No. 1674/2017, whereby the petitioner was declared as a

foreigner who has illegally entered into the territory of India (Assam) on or after 25.03.1971.

3. On perusal of the record of FT(D) Case No. 1674/2017, which was requisitioned in connection with the instant writ petition from the concerned Tribunal, it appears that suspecting Md. Abdul Mazid (the petitioner) to be an illegal migrant, an inquiry was initiated against him. During the inquiry, it was found that the petitioner, Abdul Mazid, was suspected to be an illegal migrant, who entered into India (Assam) on or after 25.03.1971.
4. On the basis of the report of the Inquiry Officer, the Superintendent of Police (Border), Nagaon referred the matter, i.e., the IM(D)T Case No. 671/2004, to the learned Illegal Migrants Determination Tribunal, Hojai under Illegal Migrants (Determination by Tribunals) Act, 1983 [hereinafter referred to as IM(D)T Act], during its force, for its opinion as to whether the said Md. Abdul Mazid is a citizen of India or not.
5. Later on, after striking down of the IM(D)T Act, 1983 by the Hon'ble Supreme Court of India in the case of "***Sarbananda Sonowal Vs. Union of India & Anr***" reported in **(2005) 5 SCC 665** and as per the direction of Hon'ble Apex Court passed therein, the aforesaid case was transferred to the learned Foreigners Tribunal, Hojai, Shankardev Nagar which was registered as FT/H/2005/2012 considering it as a proceeding

under the Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964.

6. However, it appears from the records that in the said proceeding, the petitioner Abdul Majid failed to appear before the Tribunal in spite of due service of notice on him. As a result, the reference was heard and decided *ex-parte* against him, and by order dated 19.03.2015, passed in FT/H/2005/2012, the learned Foreigners Tribunal, Hojai, Shankardev Nagar opined that the petitioner Abdul Majid, son of Abdul Latif, is a foreigner who illegally entered into India on or after 25.03.1971.
7. On perusal of the records, it appears that on 03.10.2017, an application was filed by the petitioner for vacating the *ex-parte* order dated 19.03.2015 passed in case number FT/H/2005/2012 by the learned Foreigners Tribunal, Hojai, Shankardev Nagar. However, as it was found that the case against the petitioner falls within the jurisdiction of the Jamunamukh Police Station and the same should be decided by the learned Foreigners Tribunal, Nagaon No. 10th at Shankardev Nagar, Hojai, hence, the case was transferred to the said Tribunal.
8. On receipt of the said case, it was re-numbered as FT(D) Case No. 1674/2017, and by order dated 01.11.2017 passed in the said case, the learned Foreigners Tribunal, Nagaon No. 10th at Shankardev Nagar, Hojai set aside the *ex-parte* order dated 19.03.2015, passed by the learned Foreigner's Tribunal,

Hojai, in FT/H/2005/2012, and fixed the case on 13.11.2017 for filing the written statement by the petitioner.

- 9.** Thereafter, on 13.11.2017, the petitioner appeared before the learned Foreigners Tribunal, Nagaon No. 10th at Shankardev Nagar, Hojai in FT(D) Case No. 1674/2017, and filed his written statement along with the copies of documents on which he relied upon.
- 10.** In his written statement, the petitioner had stated that his father's name, i.e. Abdul Latif was enlisted in the NRC of 1951 of the Village - Borjari Majgaon under Jamunamukh Police Station of the then Nagaon District. It is also stated in the written statement that name of the parents of the petitioner are Abdul Latif and Rahima Khatun and their name appears in the voter list of 1966 of Village Borjari Majgaon under 92 No. Jamunamukh Legislative Assembly Constituency.
- 11.** It was also stated in the written statement that in the voter list of 1970 of Village Borjari Majgaon under Jamunamukh Police Station of 92 No. Jamunamukh Legislative Assembly Constituency the names of the parents of the petitioner namely, Abdul Latif and Rahima Khatun appeared. It was also stated that the names of parents of the petitioner also appeared in the voter list of 1971, the voter list of 1989 of Village - Borjari Majgaon and thereafter, in the voter list of 1993.

- 12.** It was also stated in the written statement that the names of the parents of the petitioners along with the petitioner himself and his wife were enlisted in the voter list of 1997 under No. 90 Jamunamukh Legislative Assembly Constituency of Village - Borjari Majgaon under Jamunamukh Police Station.
- 13.** It was also stated that the name of the mother of the petitioner Rahima Khatun along with the petitioner's name also appeared in the ration card issued by the Inspector of Food and Civil Supplies, Shankardev Nagar, Hojai.
- 14.** It was also stated in the written statement that in the birth certificate of the petitioner, his place of birth has been shown as Borjari Majgaon and the name of his parents were shown therein.
- 15.** It is also stated in the written statement that the name of the grandfather of the petitioner is one Habibulla, son of late Asrab Ali who had purchased a plot of land at Village - Borjari Majgaon by executing a registered sale deed on 17.01.1961.
- 16.** It was also stated in the written statement that the grandfather and father of the petitioner are Indian citizen by birth and therefore, the petitioner is also an Indian Citizen by birth and he was born at Village - Borjari Majgaon under Jamunamukh Majgaon in the District of Hojai.
- 17.** The petitioner also adduced his evidence as DW-1 by filing his evidence on affidavit, wherein he reiterated the facts stated by him in his written statement.

18. He exhibited the following documents while deposing as DW-1:

- i.** Exhibit 1 – Certificate issued by Government Goanburah of Erakopili and Borjari Majgaon;
- ii.** Exhibit 2 – Copy of NRC of 1951;
- iii.** Exhibit 3 – Certified copy of the voter list of 1966 of Village - Borjari Majgaon under 92 No. Jamunamukh LAC Assam of the projected father of the petitioner, namely, Abdul Latif;
- iv.** Exhibit 4 – Certified copy of the voter list of 1970 of Village - Borjari Majgaon under 92 No. Jamunamukh LAC of projected father of Abdul Latif;
- v.** Exhibit 5 – Copy of Legacy Data of the projected father of the petitioner;
- vi.** Exhibit 6 - copy of legacy Data of the projected mother of the petitioner namely, Rahima Khatun;
- vii.** Exhibit 7 – Voter list of 1989 of Village Borjari under 92 No. Jamunamukh LAC showing the name of the present petitioner along with names of his projected parents;
- viii.** Exhibit 8 – Certified copy of the voter list of 1993 of village - Borjari Majgaon under 90 No. Jamunamukh LAC showing the names of the petitioner along with the names of his projected parents and his wife;
- ix.** Exhibit 9 - the certified copy of the voter list of 1997 showing the name of the present petitioner along with the name of his projected parents;
- x.** Exhibit 10 - Certified copy of voter list of 2005 of village Borjari Majgaon under 90 No. Jamunamukh LAC showing name of the present petitioner along with names of his projected parents;
- xi.** Exhibit 11 – Certified copy of voter list of 2015 village Borjari Majgaon under 90 No. Jamunamukh LAC showing name of the present petitioner along with names of his projected parents;

- xii.** Exhibit 12 - Copy of voter ID card of the petitioner (proved in original);
 - xiii.** Exhibit 13 – Birth certificate of the present petitioner showing name of his projected parent therein;
 - xiv.** Exhibit 14 – Residential certificate of the projected father of the petitioner issued by the Deputy Commissioner, Nagaon;
 - xv.** Exhibit 15 – Sale deed No. 8 dated 17.01.1961 of the projected grandfather of the petitioner;
 - xvi.** Exhibit 16 – Copy of Jamabandi in the name of the projected father of the present petitioner in respect of a plot of land in Village - Borjari Morigaon;
 - xvii.** Exhibit 17 – Registered deed No. 2414 dated 02.03.1985 in the name of the projected father of the present petitioner.
- 19.** In his evidence on affidavit, the petitioner has also deposed that the actual name of his grandfather is “Haibulla”, however, in some of the documents, the name of the grandfather of the petitioner has been wrongly shown as “Habibulla”.
- 20.** During cross-examination of the petitioner as DW-1, he has deposed that he was born in Borjari Majgaon and that his projected mother Rahima Khatun had also deposed as DW-2, and that in her evidence the names of relatives of the petitioner have been discussed in detail.
- 21.** In her evidence on affidavit, the DW-2, projected mother of the petitioner has deposed that she is a citizen of India by birth and her husband was Abdul Latif, whose name was enlisted in NRC of 1951. She has also deposed that the name

of her husband as well as her own name were enlisted in voter lists of 1966, 1970, 1971, 1989, 1993, 1997 and 2005. She has also deposed that her name along with name of the petitioner also reflects in the voter list of 2015.

- 22.** She has exhibited the certificate issued by Gaonburah as Exhibit-18. She has exhibited her voter ID card as Exhibit-19 and a ration card, which was issued by the Inspector of Food and Supplies, Shankardev Nagar, where in the name of her husband and name of the petitioner also reflects, as Exhibit-20. She has stated that as she is a citizen of India, hence, her elder son i.e., the petitioner, is also the citizen of India.
- 23.** During her cross-examination, DW-2 stated that the name of her father-in-law was Habibulla and her mother-in-law was Rukia Khatun, that they were the permanent resident of Borjari Majgaon Village and at the time of her marriage, she was 18 years old and after about 4 years of her marriage, her father-in-law had expired.
- 24.** She has also deposed that her husband had two brothers and they resided in the same house till their death at Borjari Majgaon.
- 25.** She has also deposed that her husband Abdul Latif passed away in the year 2002 and she has five sons and three daughters and they resided together in the same house at

Village Borjari Majgaon. She has also stated that she has been casting her vote regularly.

- 26.** Mr. Gias Uddin, learned counsel for the petitioner has submitted that the learned Tribunal had failed to appreciate the documentary as well as oral evidence adduced by the petitioner side during reference proceeding to show that he is a citizen of India and had come to an erroneous finding that the petitioner is a foreigner, who came to India on or after 25.03.1971.
- 27.** It is submitted by the learned counsel for the petitioner that the petitioner has adduced requisite documentary evidence to show his linkage with his projected father namely, Abdul Latif as well as projected mother, namely, Rahima Khatun. However, learned Tribunal discarded those documents merely due to some discrepancies in the exhibited documents, which were beyond the control of the petitioner.
- 28.** Learned counsel for the petitioner has submitted that the name of parents of the petitioner appeared in the voter list of 1966 and 1971. He also submits that in the voter list of 1989, 1993, 1997, 2005 and 2015 which are exhibited as Exhibit-7, 8, 9, 10 and 11 respectively, and which are in respect of Village - Borjari Mazgaon in the District of Nagaon, the names of the petitioner along with the names of his parents Abdul Latif and Rahima Khatun appears and same may be considered as linked documents showing linkage of the petitioner to his projected parents. However, same were

discarded by the learned Tribunal merely on the ground that the names of the grandfather of the petitioner is shown as Habiulla instead of Habibulla as stated by the petitioner in his written statement.

- 29.** It is submitted by the learned counsel for the petitioner that the slight discrepancy in the names of grandfather of the petitioner in the aforesaid exhibited voter list ought to have been ignored by the learned Tribunal as the said discrepancies occurred due to the fault of the concerned authorities in recording the correct name in the voter list and same was not within the control of the petitioner.
- 30.** Learned counsel for the petitioner has also submitted that the Tribunal also erred in not taking into consideration, the NRC document of the projected father of the petitioner, which has been exhibited as Exhibit-2 as well as the birth certificate of petitioner which was exhibited as Exhibit-7.
- 31.** Learned counsel for the petitioner has also submitted that the Tribunal also erred in discarding the oral testimony of the DW-2, Rahima Khatun, who is the mother of the petitioner, merely on the ground that though, the DW-2 has stated her age to be 65 years on the date when she deposed before learned Tribunal, however, if the age mentioned in the voter list of 1970, which is exhibited as Exhibit-4, is taken into consideration, the actual age of DW-2, on the day when she deposed before the Tribunal, would have been 75 years. The learned counsel for the petitioner has submitted that the

learned Tribunal has erred in discarding the oral testimony of DW-2, merely on the ground that she failed to state her age in terms of Exhibit-4.

- 32.** The learned counsel for the petitioner has also submitted that the Tribunal did not took into consideration the fact that the grandfather and father of the petitioner possessed landed property to show the same the sale deed dated 17.01.1961 of the land purchased by the projected grandfather of the petitioner has been exhibited by the petitioner as Exhibit-15, which was not taken into consideration. The learned counsel for the petitioner has thus, submitted that the impugned opinion/judgment of the learned Tribunal is liable to be set-aside and quashed.
- 33.** On the other hand, Mr. G. Sarma, learned standing counsel, Home Department, Assam has submitted that though, the petitioner side had exhibited as many as 20 documents before the learned Tribunal during the reference proceeding, however, the documents were not legally proved. Hence, same were correctly discarded by the learned Tribunal for the reasons stated by it in the impugned judgment/opinion.
- 34.** The learned standing counsel, Home Department has submitted that the petitioner has exhibited the voter list of 1970 containing the name of his projected father Abdul Mazid as Exhibit-4 and has also exhibited voter list of 1989 of Village - Borjari as Exhibit-7, however, there is no indication in the pleadings as well as in the evidence adduced by the

petitioner before the learned Tribunal as to what happened during the gap period of 19 years in between 1971 to 1989. The learned standing counsel, Home Department has submitted that as per Section 6A(3)(b) of the Citizenship Act, 1955, the proceedee has an obligation to prove that since the date of his entry into Assam, he has been ordinarily residing in the State of Assam. However, in the instant case, no evidence has been adduced and no clarification has been made by the petitioner side as to what had happened to his projected father during the gap period in between 19712 to 1989.

- 35.** The learned standing counsel, Home Department has also submitted that though, the petitioner has exhibited the certificate issued by Gaonbura as well as the birth certificate as Exhibit-1 and Exhibit-13, respectively, however, the said certificates were not proved in the manner as required under law as the issuing authorities of the said certificates were not examined.
- 36.** Hence, he submits that the petitioner has failed to prove the aforesaid certificates on the basis of contemporaneous records maintained in public office with regard to the said certificate and by adducing the evidence of issuing authorities and therefore, the learned Tribunal had rightly discarded the said certificate.
- 37.** The learned Standing Counsel, Home Department has also submitted that the petitioner has not named his siblings and

other relevant details like the name of his brothers, grandparents and maternal grandparents as well as status of the parents and grandparents on the day of filing of the written statement before the learned Tribunal and thus, has failed to disclose the material facts in his written statement as mandated by the Apex Court in the case of "**Sarbananda Sonowal Vs. Union of India & Another**" reported in (2005) 5 SCC 665.

- 38.** We have considered the submission made by learned counsel for the rival parties and have perused the materials available on record including the original case record of FT (D) Case No. 1674/2017, which was requisitioned from the learned Foreigners, the Tribunal, Nagaon No. 10th Shankardev Nagar, Hojai, Assam in connection with this case.
- 39.** In the case of **Sarbananda Sonowal Vs. Union of India & Another**" (*Supra*) it was held by the Hon'ble Apex Court that in order to establish one's citizenship normally a proceedee may be required to give evidence of his date of birth, place of birth, name of his parents, place of birth and citizenship of his parents and sometimes the place of birth of his grandparents may also be relevant. All these facts would be necessarily within the knowledge of person concerned and not of the authorities of the State and it is the bounded duty of the proceedee to disclose such material facts at the first instance itself i.e. in his written statement.

- 40.** Section 9 of Foreigners Act, 1946 mandates that the onus of proof of citizenship of a person is upon that person who claims to be a citizen of India.
- 41.** Under the aforementioned circumstances, legal setup before the court, where the petitioner adduces evidence to prove his citizenship, it is incumbent upon him to plead all the material facts in the written statement filed by him and if he does not do so he may not be allowed to traverse beyond the pleadings in the reference proceeding.
- 42.** In the instant case, the petitioner has pleaded, in his written statement that the name of his projected father is Abdul Latif and projected mother is Rahima Khatun and paternal grandfather's name is shown to be Habibulla. He has not stated anywhere in his written statement that the name of his projected paternal grandfather is "Haibulla" and not "Habibulla". For that matter he has also not explained in his pleadings that in some of the documents relied upon by him the name of his projected grandfather is shown to be "Habiulla". Though, while deposing as DW-1, the petitioner has deposed that the name of his grandfather is Haibulla, which has not been pleaded in his written statement.
- 43.** Similarly, though, the DW-2, the projected mother of the petitioner, has deposed that she has 5 sons and 3 daughters, however, no mention about the said siblings of the petitioner has been made in his written statement by the petitioner.

- 44.** Similarly, though, the DW-2 has stated that the projected father of the petitioner namely, Abdul Latif have passed away in the year 2002, however, this fact was also not disclosed by the petitioner in his written statement. Moreover, no explanation has been given as to how in the voter list of 2005, which is exhibited as Exhibit-10, name of Abdul Latif appeared who the petitioner claiming to be his father and who has been stated to have expired in the year 2002 itself. Similarly, the birth certificate of the petitioner, which contains his name along with the names of his projected parents and which is exhibited as Exhibit-13 has also not been proved by the issuing authority, on the basis of contemporaneous records maintained by the Registrar of Birth and Death. Further, said Birth Certificate, Exhibit-13 showing date of birth of the petitioner as 10.08.1973 was allegedly registered on 29.08.1986, issued on 09.09.1986, that to without any Book No., Issue No. and Receipt No.
- 45.** Similarly, the Exhibit-1 which is the certificate issued by Gaonburha was also not proved by the issuing authority i.e., by examining the Gaonbura as a witness on the basis of contemporaneous records by him.
- 46.** In respect of Exhibit-20 also i.e., the, ration card in the name of the projected mother of the petitioner, the same has not been proved by the examining the issuing authority.
- 47.** The Exhibit-13, i.e., the birth certificate of the petitioner, Exhibit-1, i.e. the certificate issued by the Goanbura and

Exhibit-20, i.e., the ration card issued in the name of the projected mother of the petitioner were not proved by the issuing authorities. Neither the contents thereof were proved on the basis of contemporaneous record. When the petitioner is relying upon the aforesaid documents as link documents to show his linkage with his projected parents, it was incumbent on the petitioner not only to prove the said documents, but also the contents thereof on which he was relying upon. However, in the instant case, the petitioner has not proved the aforesaid documents in the manner as required under law. Hence, we are of the considered opinion that the learned Tribunal was right in not relying on the aforesaid exhibits.

- 48.** Moreover, it has been held by this Court in the case of "**Noor Begum v. Union of India**" [WP(C) No. 1900/2019] that in a proceeding under Foreigners (Tribunal) Order 1964 the evidentiary value of oral testimony without support of documentary evidence is wholly insignificant. Therefore, we are of the considered opinion that as the petitioner has not been able to prove his linkage with his projected parents by adducing cogent, reliable and admissible documentary evidence, the learned Tribunal has not erred in discarding the oral testimony of DW-2, who was projected as the mother of the petitioner.
- 49.** We also do not find any error in the learned Tribunal discarding the Exhibits-7, 8, 9 and 10 i.e. the voter lists of 1989, 1993, 1997 and 2005, wherein the name of the

projected grandfather of the petitioner has been shown as "Habiulla" and not as "Habibulla" as pleaded by the petitioner in his written statement or as "Haibulla" as deposed by the petitioner in his evidence on affidavit, as the petitioner could not satisfactorily explain the said discrepancies of the name of his projected grandfather.

- 50.** Though, the projected mother of the petitioner has deposed in her testimony that she had 8 children, however, in none of the exhibited voter lists, i.e., Exhibit Nos. 7, 8, 9, 10 and 11, their names appeared along with the names of the petitioner and no reason has been shown regarding absence of the names of the siblings in the voter lists exhibited by the petitioner. Hence, we are of the considered opinion that the Tribunal had rightly not relied upon the said exhibits.
- 51.** As discussed hereinbefore, the material facts which were within the special knowledge of the petitioner, ought to have been mentioned in the written statement filed by him and on the basis of the pleadings made by the petitioner, he ought to have adduced reliable and admissible evidence to establish his linkage with his projected parents. However, in the instant case, the petitioner has failed to do so. Hence, we do not find any irregularity or illegality in the impugned finding arrived at by the learned Tribunal.
- 52.** We are of the considered opinion that the learned Tribunal has rendered the impugned opinion/judgment upon due consideration of the pleadings, evidence and documents

brought on record and also by giving proper reasons for not relying on the exhibited documents and evidence adduced by the petitioner.

- 53.** We, therefore, find no infirmity in the opinion rendered by the learned Tribunal which has been impugned in this writ petition. As the powers of this Court, while exercising its writ jurisdiction where the prayer is for issuance of the writ of certiorari, are supervisory in nature and not like the appellate powers, where the evidence on records may be re-appreciated and re-weighed, unless there is a glaring error apparent on the face of record or there is violation of principles of natural justice. As in this case, the learned Tribunal has arrived at its finding after due consideration of the materials on record, we would refrain ourselves from interfering with the said findings of facts.
- 54.** For the reasons mentioned in foregoing paragraphs, we do not find any merit in the instant writ petition and, accordingly, uphold the impugned opinion dated 03.07.2018 passed by the learned Foreigners Tribunal, Nagaon No. 10th, Shankardev Nagar, Hojai in FT(D) Case No. 1674/2017, arising out of the SP's IM(D)T Case No. 671/2004.
- 55.** This writ petition is accordingly, stands dismissed.
- 56.** The interim protection granted to the petitioner by this Court on 04.01.2019 stands vacated/recalled.

- 57.** The Registry to send back the records of FT(C) Case No. 1674/2017 to learned Foreigners Tribunal, Nagaon No. 10th, Shankardev Nagar, Hojai, Assam forthwith along with a copy of this judgment.
- 58.** Let, a copy of this judgment be also furnished to the Deputy Commissioner, Hojai, Assam and the Superintendent of Police (Border), Hojai for their necessary use.

JUDGE

JUDGE

Comparing Assistant