



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

WP(C) No. 8693/2018

1. Bishambar Mandal
S/O Late Thakur Das Mandal,
Resident of Village No. 2 Gunamara,
P.S. Dharamtul, District- Morigaon,
Assam.
2. Smti Adavi Mandal @ Adavi Biswas
W/O Bisambar Mandal
D/O Bhabani Biswas @ Bhabani Barman
Resident of Village No. 2 Gunamara
P.S. Dharamtul
District- Morigaon Assam.
3. Niranjana Mandal @ Nira Mandal
S/O Bishambar Mandal
Resident of Village No. 2 Gunamara
P.S. Dharamtul
District- Morigaon Assam.
4. Nibaran Mandal
S/O. Bishambar Mandal
Resident of Village No. 2 Gunamara
P.S. Dharamtul
District-Morigaon Assam.
5. Smti Prabhati Mandal @ Prabhati Biswas
D/O. Bishambar Mandal
Resident of Village No. 2 Gunamara
P.S. Dharamtul
District- Morigaon Assam.

6. Smti Ranu Mandal @ Ranu Biswas
D/O Bishambar Mandal
W/O. Sri Hemanta Biswas
R/O. Village- Chitalmari
P.O. Mangaldoi
District- Darrang Assam

.....Petitioners

-Versus-

1. The Union of India,
Through-The Ministry of Home Affairs,
Griha Mantralaya,
New Delhi-110001.
2. The State of Assam,
Through-The Secretary To The Government of
Assam, Home Department
Dispur, Guwahati-6.
3. The Election Commission of India,
Nirvachan Sadan,
Asoka Road, New Delhi-110001.
4. The State Co-Ordinator,
National Registration of Citizen Assam,
Bhangagarh, Guwahati.
5. The Deputy Commissioner
Morigaon P.O. and District-Morigaon Assam.
6. The Superintendent of Police (Border)
Morigaon P.O. Morigaon
District-Morigaon Assam

.....Respondents

For Petitioner	:	Mr. S. C. Biswas
For Respondent(s)	:	Mr. G. Sarma, SC, Home Department Mr. H. Kuli, SC, Election Commission of India Mr. H. K. Hazarika, Government Advocate
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. S. C. Biswas, learned counsel for the petitioners and Mr. G. Sarma, learned Standing Counsel for the Home Department, Assam for the respondent Nos.2 and 6. Also heard Mr. H. Kuli, learned Counsel appearing for the Election Commission of India namely the respondent No.3; and Mr. H. K. Hazarika, learned Government Advocate, Assam for the respondent No.3.
- 2.** This Writ Petition, under Article 226 of the Constitution of India, has been filed by the petitioners, namely, (1) Bishambar Mandal, (2) Smti Adavi Mandal @ Adavi Biswas, (3) Niranjana Mandal @ Nira Mandal, (4) Nibaran Mandal, (5) Smti Prabhati Mandal @ Prabhati Biswas, and (6) Smti Ranu Mandal @ Ranu Biswas impugning the opinion/order dated 21.08.2018 passed by the learned Foreigners Tribunal No. 1, Morigaon in FT(C) Case No. 706/2010, whereby, the above-named petitioners were declared as foreigners under the Foreigners Act, 1946, who had illegally entered into India (Assam) on or after 25.03.1971.

3. We have perused the case record of FT(C) Case No. 706/2010, which was requisitioned in connection with the instant writ petition from the Foreigners Tribunal No. 1, Morigaon.
4. On perusal of the records of the FT(C) Case No. 706/2010, it appears that suspecting one Shri Bishambar Mandal to be a foreigner, an inquiry was initiated against him. During the police enquiry, it appeared that Shri Bishambar Mandal was suspected to be an illegal migrant who entered into India (Assam) on or after 25.03.1971.
5. Considering the report of the Inquiry Officer, the Superintendent of Police (Border), Morigaon, referred the matter, i.e., IM(D)T Case No. 1035/2002, to the learned Illegal Migrants Determination Tribunal 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 Bishambar Mandal is a citizen of India or not.
6. 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 No. 1, Morigaon, which was registered as

FT(C) Case No. 706/2010 considering it as a proceeding under the Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964.

- 7.** We have noticed from the records available before us, that the learned Foreigners Tribunal No. 1, Morigaon, on 22.07.2016, had issued notice not only to the petitioner No.1 Bishambar Mandal but against other petitioners also, fixing 17.11.2016 as the date for their appearance and submission of written statement by them.
- 8.** It is pertinent to mention herein that the petitioner No. 2 is the wife of the petitioner No. 1. The petitioner Nos. 3 and 4 are the sons of petitioner No.1, whereas, the petitioner Nos. 5 and 6 are the daughters of petitioner No.1.
- 9.** It is also important to note that no references were made against the petitioner Nos. 2 to 6, and, in spite of that, the Tribunal issued notice to them in the FT(C) Case No. 706/2010 and further by the impugned opinion dated 21.08.2018, all the above-named petitioners were declared as foreigners under the Foreigners Act, 1946, who had illegally entered into India (Assam) on or after 25.03.1971.
- 10.** We intend to first discuss the matter regarding petitioner Nos. 2 to 6, against whom, it appears from record, that no reference was made against them. Thereafter, we shall discuss the case of the petitioner No. 1.

11. The learned counsel for the petitioners has submitted that in the instant case the enquiry was conducted and the reference was made only with regard to the petitioner No.1 Bishambar Mandal and neither any enquiry was conducted with regard to the nationality of other petitioners, nor any references were made in respect of the said petitioners, therefore, the learned Foreigners Tribunal No. 1, Morigaon had erred in assuming the jurisdiction and initiating the proceeding against the above named petitioners Nos. 2 to 6 under the Foreigners (Tribunals) Order, 1964.
12. Mr. G. Sarma, learned standing counsel, Home Department also submits that from available record, it appears that no references were made with regard to petitioner Nos. 2 to 6.
13. A Full Bench of this Court has observed in the case of **"State of Assam and Others vs. Moslem Mondal and. Others"** reported in **2013 (1) GLT 809** as follows:

"(89) The Tribunal gets the jurisdiction to give an opinion on the question whether a person is foreigner or not only when a reference is made by the authorities mentioned in clause 2 of the 1964 Order. The Tribunal, thereafter, has to cause service, on the person to whom the reference relates, a copy of the main grounds on which he is alleged to be a foreigner. The Tribunal is also required to give a reasonable opportunity of making a representation, producing evidence in

support of his case and after considering such evidence as may be produced as well as after hearing such persons as may deserved to be heard, it has to submit its opinion to the authority specified in that behalf in the order of reference. The Tribunal, however, is empowered to regulate its own procedure. Clause 4 of 1964 Order confers on the Tribunal the power of a Civil Court while trying a suit under the Code of Civil Procedure, in respect of (a) summoning and enforcing the attendance of any person and his examination on oath; (b) requiring the discovery and production of any document; and (c) issuing commissions for the examination of any witness. The procedure laid down in the Code of Civil Procedure as such is not applicable in a proceeding before the Tribunal, except in relation to the matter stipulated in clause 4 of the said Order. As noticed above, the Tribunal is empowered to regulate its own procedure while deciding a reference proceeding pending before it."

- 14.** Moreover, in the case of "***Aktaara Khatun Vs. State of Assam***" reported in ***2017 (2) GLT 974*** as well as in the case of "***Sudhir Roy Vs. Union of India***" reported in ***2019 (1) GLT 353***, it has been settled that the presumption by itself would not lead to a conclusion that the family members of a proceedee who has been declared as a foreigner are also foreigners, though, the same may be a good cause of initiating an inquiry and make a reference against the family members of such a proceedee.

However, without following the due procedure of law by conducting an inquiry and without making a reference, the Foreigners Tribunal cannot assume jurisdiction and give its opinion against the family members of a proceedee for whom no reference was made.

- 15.** On perusal of the records of the FT(C) Case No. 706/2010, of the learned Foreigners Tribunal No. 1, Morigaon, we have seen that, in the instant case, the enquiry under the IM(D)T Act, 1983 was made in respect of Bishambar Mandal, son of late Thakur Das Mandal only and the reference was also made in respect of the said Bishambar Mandal. There was neither any enquiry with regard to the nationality of other petitioners Nos. 2 to 6 nor was there any reference made under the Foreigners (Tribunals) Order, 1964 in respect of them by the competent authority to the learned Foreigners Tribunal No. 1, Morigaon.
- 16.** Under the aforesaid circumstances, we are of the considered opinion that the learned Foreigners Tribunal No. 1, Morigaon was wrong and committed illegality in issuing notice to the petitioner Nos. 2 to 6 under the Foreigners (Tribunals) Order, 1964 on 22.07.2016 by initiating the proceedings under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 against them in the said FT(C) Case No. 706/2010 and thereafter, rendering opinion to the effect that those

petitioners are foreigners who came to India (Assam) on or after 25.03.1971.

- 17.** For the above stated reasons, we are constrained to hold that the impugned opinion/order given by the learned Foreigners Tribunal No. 1, Morigaon, on 21.08.2018, in the FT(C) Case No. 706/2010 with regard to the nationality of the petitioner Nos. 2 to 6 is illegal and without jurisdiction and same is accordingly, set aside and quashed.
- 18.** However, there shall not be any bar for the authorities concerned to make an enquiry and refer the matter to the Tribunal concerned for determination of citizenship of the petitioner Nos. 2 to 6 in accordance with law.
- 19.** Now, let us discuss the case of petitioner No. 1, namely, Bishambar Mandal. It appears from record that the learned Foreigners Tribunal No. 1, Morigaon issued notice to petitioner No. 1, Bishambar Mandal on 22.07.2016. After receiving the notice, the petitioner No. 1 appeared before the Foreigners Tribunal and filed his written statement on 23.12.2016.
- 20.** The petitioner No. 1 had also adduced evidence in support of his contention that he is not a foreigner by examining himself as DW-1, his wife Aduri Mandal as DW-2 and one Surya Biswas as DW-3.

21. Following documents were exhibited by the petitioner No. 1, before the learned Tribunal, in support of his contentions:

- i.** Exhibit A - the voter list of in respect of father of the Petitioner No.1;
- ii.** Exhibit B - is the voter ID Card of PetitionerNo.1;
- iii.** Exhibit C - is the voter ID Card of Petitioner No.4;
- iv.** Exhibit D - is the voter ID Card of in respect of Petitioner No.3;
- v.** Exhibit E - is the Gaonbura certificate of Petitioner No.1;
- vi.** Exhibit E-1 to Exhibit E-5 are the Gaonbura certificates for the other petitioners;
- vii.** Exhibit F - is the G.P. certificate of Petitioner No.2;
- viii.** Exhibit G - is the voter list of 1966;
- ix.** Exhibit H- is the voter list of 1970;
- x.** Exhibit I - is voter ID card of Petitioner No. 2;
- xi.** Exhibit J - is the land document;
- xii.** Exhibit K- is the voter list of 1970 of father of Petitioner No.1;
- xiii.** Exhibit L - is the enrolment Form;
- xiv.** Documents marked as Mark-1, Mark-2 and Mark-3 are affidavit and voter list of 1977;
- xv.** Documents marked as Mark-4 - photocopy of voter list of 2014.

22. As we have already set aside the impugned order in respect of the petitioner Nos. 2 to 6, we shall confine ourselves to examine only those materials on record which relates to petitioner No.1.

23. In his written statement, the petitioner No.1 has stated that many years ago he and his father, namely, Thakur Das

Mandal, son of Munindra came from Village-Pub Balikuri Nonke, under Baghbar P.S., Barpeta Sub-division in the district of erstwhile Kamrup to the Village No. 2, Gunamara under Dharamtul Police Station in the District-Morigaon, in search of livelihood and permanently settled in the said village.

- 24.** It was also contended in the written statement by the petitioner No.1 that his father namely, Thakur Das Mandal, son of Munindra was a citizen of India and his name was enlisted in the voter list of 1966 of the 52 No. Baghbar at Village-Pub Balikuri Nonke, under Baghbar P.S. in the district of the then Kamrup, Assam against serial No. 997, House No. 359, Part No. 16.
- 25.** In his evidence as DW-1, the petitioner No. 1 Bishambar Mandal deposed before the learned Tribunal that he was born and brought up at No. 2 Gunamara and his father was born in the village Balikuri at Barpeta and his father had cast his vote in 1966 at village Balikuri.
- 26.** During cross-examination, he deposed that name of his grandfather is Munindra Mondal and who had four sons, namely, Rabi, Haltu, Mukunda and Thakur Das and one daughter, namely, Bohagi. He has also deposed that he had one brother namely, Mangal Das Mondal who stays at Gunamara.

- 27.** DW-2 Adori Mondal has not deposed anything relevant in respect of the petitioner No.1, she has deposed everything with regard to her own citizenship status only.
- 28.** Similarly, DW-3 Shri Surya Biswas has stated that the DW-2, who is his sister was married to the petitioner No. 1 Bishambar Mandal, who has settled in the land of one Harendra Biswas who is his maternal uncle. He has also deposed that the petitioner No.1 has one brother namely, Mongal and he has exhibited a copy of Jamabandi as Exhibit-J where the name of Mongal Mondal is reflected. He has also exhibited a copy of voter list of the year 1970 in respect of one Thakur Das and his family. He has also exhibited an enrolment form-12 in the name of the wife of the present petitioner, namely, Adori Mondal.
- 29.** Learned counsel for the petitioner has submitted that the father of the petitioner No. 1, namely, late Thakur Das Mondal, son of late Munindra Mandal came to India from East Pakistan during partition and permanently settled at Abhyapuri where he purchased a plot of land and in respect of the said plot of land a final *Khatian* dated 21.11.1961 was issued which been annexed with the writ petition as Annexure-1.
- 30.** Learned counsel for the petitioner has also submitted that thereafter, the father of the petitioner No. 1 shifted to Balikuri

Nonke Village under Baghbar Police Station in the erstwhile District of Kamrup under Barpeta Sub-division and his name has been reflected in voter list of 1966 as well as 1977. However, it is submitted that the learned Tribunal erred in discarding the said voter lists, merely on the ground that the name of the father of the petitioner appeared in voter list of 1977 as "Thakur Das" instead of "Thakur Das Mondal" and the name of the petitioner No.1 was shown as Bishambar Das instead of Bishambar Mandal.

- 31.** Learned counsel for the petitioner No.1 has also submitted that the learned Tribunal did not consider Exhibit-E, i.e., the certificate issued by the Gaon-burha showing linkage of the petitioner with his father as reliable as the authority which issued the said certificate was not examined in that regard.
- 32.** Learned counsel for the said petitioner has submitted that as it was the mistake of his engaged counsel in failing to adduce the evidence in accordance with law before the learned Tribunal and as it was not the fault of the petitioner No. 1, the matter should be remanded back to the learned Tribunal, so that an opportunity may be afforded to the petitioner to adduce additional evidence to prove his citizenship.
- 33.** On the other hand, learned Standing Counsel, Home Department of the State has submitted that the Tribunal has correctly assessed the materials available on record before

rendering the impugned opinion/order and hence, the impugned opinion/order does not warrant any interference by this Court in exercise of its writ jurisdiction.

- 34.** Learned standing counsel, Home Department has also submitted that though in the written statement, the petitioner No.1 has categorically stated that he and his father Thakur Das Mondal came to Village No. 2 Gunamara under Dharamtul Police Station in the Morigaon district from Village-Pub Balikuri Nonke under Baghbar Police Station, Sub-division Barpeta in the erstwhile Kamrup district for livelihood, however, while deposing as the DW-1, the petitioner No. 1 has deposed that he was born and brought up at Village No. 2, Gunamara, which contradicts his statement made by him in his written statement and thereby, makes his testimony unreliable.
- 35.** Learned Standing Counsel, Home Department has also submitted that the petitioner No.1 has also failed to prove any link document to show his linkage with his projected father Thakur Das Mondal. He also submits that the Exhibit-A, which is the certificate issued by the Goanburha concerned was not duly proved by the Gaonburah, who issued the said certificate.
- 36.** It is further, submitted by the learned Standing Counsel for the Home Department that in the voter list of 1977, the name of the petitioner is shown as Bishambar Das instead of

Bishambar Mandal and his father's name has been shown as Thakur Das instead of Thakur Das Mondal and hence, the petitioner No. 1 has failed to prove linkage with his projected father, namely, Thakur Das Mandal, whose name appears in the voter list of 1966, i.e., Exhibit-A.

- 37.** It is, therefore, submitted by the learned Standing Counsel, Home Department that the learned Tribunal has correctly opined on the basis of materials before it that the petitioner No.1 is a foreigner who had entered into India on or after 25.03.1971 and the said opinion does not require any interference by this Court.
- 38.** We have considered the submissions made by the learned counsel for both the sides and have gone through the materials available on record including the original case record of FT(C) Case No. 706/2010.
- 39.** In exercise of the writ jurisdiction for issuance of writ of certiorari, this Court is not supposed to reweigh or review the evidence upon which the finding of the learned Tribunal is based. It can exercise such writ jurisdiction only if the finding of the learned Tribunal is palpably erroneous or there is an error of law which is apparent on the face of the record. However, for our own satisfaction, we have gone through the pleadings as well as evidence adduced by the petitioner No.

1, before the learned Tribunal, in support of his contention that he is a citizen of India.

- 40.** It appears that the petitioner No.1 has projected one Thakur Das Mandal as his father and has exhibited the voter list of 1966 as Exhibit-A to show that the name of the Thakur Das Mandal appears in the said voter list, therefore, it is contended that he was a citizen of India before 1971 and accordingly, being his son, the petitioner No. 1 is also a citizen of India.
- 41.** However, the documents which the petitioner No. 1 had exhibited as link document to show his relationship with Thakur Das Mandal as his father could not be proved by the petitioner No.1. He has exhibited Exhibit-E, which is the certificate issued by the Goanburha of No. 2 Gunamara Village, Morigaon. However, the said certificate was not proved by the Goanburha, who had issued the same by proving the contents thereof, on the basis of the contemporaneous records as the truthfulness of the contents of a document would have to be established from contemporaneous records as held by this Court in the case of ***"Romila Khatun Vs. Union of India and Others"*** (Judgment dated 08.06.2018 in WP (C) 3807/2016).
- 42.** We are also of the considered opinion that the Tribunal had not erred in discarding the Exhibit-J, which is the

computerized copy of Jamabandi which shows that name of one Mangal Mandal, whom the petitioner claim to be his brother, has been mutated in respect of land covered by Patta No. 94 Dag No. 286 of Village No. 2 Gunamara in the District of Kamrup as in the written statement filed by the petitioner No.1 before the Tribunal, he had not pleaded that his brother's name is Mangal Mandal.

- 43.** In the case of *"Rashminara Begum Vs. Union of India"* reported in **2017 4 GLT 346**, this Court has observed that written statement is basic statement of defence of proceedee before Foreigners Tribunal. Keeping in mind the mandate of Section 9 of Foreigners Act, 1946, it is incumbent upon a proceedee to disclose at the first instance itself i.e. in his written statement all facts specially within his knowledge having a material bearing on his claim to citizenship of India.
- 44.** Material facts pleaded in the written statement are thereafter, required to be proved by adducing cogent and reliable evidence. It is also settled principle that a party cannot traverse beyond pleading made in the written statement.
- 45.** In the instant case, the petitioner No. 1 has not stated anything about his projected brother, Mangal Mandal in his written statement, hence, the evidence to that effect would be beyond pleadings and not admissible and we are of the considered opinion that the learned Tribunal had correctly

discarded the said document as of no use to prove the linkage of the petitioner No. 1 with his projected father.

- 46.** Moreover, we are also of the considered opinion that the learned Tribunal rightly discarded the voter list of 1977 which has been marked as Mark-1 as it does not contain the name of the petitioner as Bishambar Mandal, but as one Bishambar Das son of Thakur whereas in Exhibit-A, i.e., the voter list of 1966 name of one Thakur Das Mandal is there, whom the petitioner No. 1 claimed to be his projected father. The name of the father of Thakur Das as shown in voter list of 1977 as "Manohar", whereas, the name of the father of Thakur Das Mondal in the voter list of 1966 is shown as Munindra. Moreover, the age of Thakur Das is shown in voter list of 1977 as 45 years whereas the age of Thakur Das Mandal is shown in voter list of 1966 as 47 years. Due to aforesaid discrepancies of names of the projected father of the petitioner No. 1 as well as his age shown in voter list of 1966 and 1977, we are of the considered opinion that the learned Tribunal correctly discarded the said evidence and came to finding that the said documents are of no use to show linkage of the petitioner to the person whom he has projected as his father.
- 47.** In respect of the submissions made by the learned counsel for the petitioner No.1 that his projected father namely, Thakur Das Mondal had purchased a plot of land at

Abhayapuri and final *Khatian* dated 21.11.1961 in the name of Thakur Das Mondal was also issued. But it is seen that the document which the petitioner No. 1 has annexed as Annexure-1 with the writ petition i.e., the final *Khatian* dated 21.11.1966 was never exhibited before the learned Tribunal by him during the pendency of the reference proceeding before it, hence, the said document same cannot be introduced now during the pendency of this writ petition and it would be of no use for assailing the impugned opinion/order dated 21.08.2018 of the learned Tribunal.

- 48.** We are thus, in agreement with the finding of the learned Tribunal in the impugned order that the petitioner No. 1 has failed to establish his linkage with his projected father by adducing the cogent, reliable and acceptable evidence and thus, the finding of the learned Tribunal in respect of the petitioner No.1 by the impugned opinion/order dated 21.08.2018 holding him to be a foreigner who entered into India on or after 25.03.1971 needs no interference.
- 49.** Thus, for the reasons stated hereinabove, this writ petition is hereby disposed of with the following directions:
- i.** The impugned opinion/order given by the learned Foreigners Tribunal No. 1, Morigaon, on 21.08.2018, in FT(C) Case No. 706/2010 with regard to the nationality of the petitioner Nos. 2 to 6 is held to be illegal and without

jurisdiction for the reasons stated in this order and accordingly, the same is set aside and quashed.

- ii. However, as regards petitioner No.1 we do not find any ground to interfere with the finding of the learned Tribunal by the impugned opinion/order dated 21.08.2018 in holding the petitioner No. 1 to be a foreigner who entered into India on or after 25.03.1971 and accordingly, with regard to the petitioner No. 1 is concerned, the writ petition is dismissed.
- iii. The interim order passed earlier in respect of petitioner No.1 is hereby vacated, whereas, the interim order passed earlier in respect of petitioners Nos. 2 to 6 stands merged with this order.

- 50.** This writ petition is thus, partly allowed to the extent above and with regard to the petitioner Nos. 2 to 6.
- 51.** Registry to send back the records of FT(C) Case No. 706/2010 to the Foreigners Tribunal No. 1, Morigaon along with a copy of this judgment.
- 52.** Let, a copy of this judgment be also furnished to the Deputy Commissioner, Morigaon and the Superintendent of Police (Border), Morigaon for their necessary use.

JUDGE

JUDGE

Comparing Assistant