

GAHC010280082019



2024:GAU-AS:12406

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

Case No. : Review.Pet./184/2019

MD. SIRAJ ALI @ CHIRAJ ALI AND 2 ORS.
S/O- LATE ABDUL AZIZ @ AJIT ALI KHA, R/O- MILANPUR, WARD NO. 3,
P.O., P.S. AND DIST.- MORIGAON, ASSAM, PIN- 782105.

2: SAHIDUL ISLAM
S/O- LATE ABDUL AZIZ @ AJIT ALI KHA
R/O- MILANPUR
WARD NO. 3
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105.

3: MUSSTT. SAMINA NEHAR @ SABINA NEHAR
W/O- SIRAJ ALI @ CHIRAJ ALI
R/O- MILANPUR
WARD NO. 3
P.O.
P.S. AND DIST.- MORIGAON
ASSAM
PIN- 782105

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI- 110001.

2: THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3: THE DEPUTY COMMISSIONER

MORIGAON
DIST.- MORIGAON
ASSAM
PIN- 782105.

4:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
ASSAM
PIN- 782105.

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001.

6:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
PIN- 781032

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. A M AHMED,MR. J M
SULAIMAN

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

Linked Case : WP(C)/6771/2014

MD. SIRAJ ALI @ CHIRAJ ALI and 2 ORS.
S/O LT. ABDUL AJIZ @ AJIZ ALI @ AJIT R/O MILANPUR
WARD NO. 3
P.O. P.S. and DIST. MORIGAON
ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECRETARY
MINISTRY OF HOME AFFAIRS
GOVT.OF INDIA
NEW DELHI.

Advocate for : MR.B K DAS
Advocate for : appearing for THE UNION OF INDIA and 4 ORS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE NELSON SAILO

J U D G M E N T & O R D E R (Oral)

05.12.2024

(Nelson Sailo, J)

Heard Mr. H.R.A. Choudhury, learned Senior Counsel assisted by Mr. A.M. Ahmed, learned counsel for the petitioners. Also heard Mr. J. Payeng, learned Standing Counsel for the F.T. matters, Mr. R.K. Talukdar, learned Govt. Advocate and Mr. A.I. Ali, learned Standing Counsel for the Election Commission of India.

[2.] By filing this Review Petition, the petitioners have sought review of the Judgment & Order dated 31.01.2018 passed by this Court in WP(C) No. 6771/2014, by which the Order dated 19.06.2014 passed by the Foreigners Tribunal (2nd), Morigaon, Assam in F.T (C) Case No. 350/2011 (State of Assam –Vs- Md. Chiraj Ali & Ors.) declaring the petitioners to be foreigners and who had illegal entered into India (Assam) from Bangladesh after 25.03.1971 was upheld.

[3.] The petitioners have preferred the instant Review Petition on the following grounds:-

“A. For that, in the instant case, though there may be some minor discrepancies in regard to name and age which were prepared by some authorities, such as the enumerators at the time preparing voter lists, may be

while sitting in the house of the Village-Headman or some leading person of the Village concerned, the names and the ages were furnished by them as they thought to be so, and in most of such cases, the person concerned were not even present on such occasion and these were done in simple belief not perceiving that such grave problem may arise in future for such discrepancies. So, the Hon'ble High Court may be pleased to consider in the light of the Judgment dated 14.02.2019 passed by the Hon'ble Supreme Court in a Criminal Appeal No.267/2019 (arising out of SLP (Crl.) No. 4500/2018) Sirajul Hoque -Vs- The State of Assam and Ors. This Hon'ble Court further be pleased to consider the entire materials, specially the "Family Tree" and "Final NRC" in the names of family members and be gracious enough to review the Judgment and order dated 31.01.2018 passed in W.P(C) No.6771/2014.

B. *For that, the Learned Tribunal as well as this Hon'ble Court did not give any finding on the documents i.e voter lists of 1966, 1970 and land Jamabandi in the name of father Abdul Rashid of the petitioner No.3 and hence it is an error apparent on the face of records which required to be reviewed and/or modify.*

C. *For that, the petitioners categorically state that the petitioners No.1 and 2 are the sons of Abdul Aziz @ Abdul Ajit Kha whose name appeared in the voter lists of 1970 and subsequent voter list. The names of the petitioners No.1 and 2 appear alongwith their father and mother in the voter list of 1993 and 1997 under Laharighat LAC in the district of Nagaon and successfully established linkage with their father and mother. The School certificates in respect of all the petitioners established their linkage with their fathers and the same was not considered by the Tribunal as well as this Hon'ble Court.*

D. For that, petitioners Nos.1 and 2 are regular Grade IV Govt. Employee under PDW and Legal Metrology Department, Assam and their appointments were made after Police verification which was not considered at all and hence required to be reviewed and modified.”

[4.] Mr. H.R.A. Choudhury, learned Senior Counsel referring to the Results for all NRC applicants as per Draft NRC & Supplementary List of Inclusion and Exclusion (Final NRC) annexed to the Review Petition as annexures 30, 31 & 32 submits that the names appearing in the said list namely, Abdul Mazid, Harmuz Ali and Hazrat Ali, all sons of Kalu Kha are the paternal uncle of the petitioner Nos. 1 & 2. He submits that after the writ petition was dismissed by this Court, the names of the relatives of the petitioners have been included in the NRC and therefore, the Judgment & Order dated 31.01.2018 passed by this Court may be recalled and the matter send back to the Foreigners Tribunal for rendering a fresh opinion. In support of his submission, the learned Senior Counsel relies upon the case of *Abdul Kuddus –Vs- Union of India & Ors. (2019) 6 SCC 604*.

[5.] Referring to paragraph No. 28 of the said Judgment, the learned Senior Counsel submits that in a given case, the persons aggrieved with the opinion rendered by the Foreigners Tribunal would have the liberty to invoke writ jurisdiction or if necessary, review jurisdiction before the High Court of Supreme Court to ensure that no injustice is done. Any order passed in case of close family members, subsequent to adjudication order determining the citizenship status of a

person, would necessarily be a material evidence which can be duly taken note of and considered while deciding a writ petition or a review application. He submits that the Office of the State Coordinator of National Registration (NRC), Assam having published the supplementary list on 31.08.2019 whereby, the names of the relatives of the petitioners have been included, the Review Petition should be allowed and the matter remanded back to the Foreigners Tribunal concerned for reconsideration. He submits that the said exercise has been carried out as per Paragraph 7 of the Schedule under Rule 4-A (4) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003 (Rules of 2003).

[6.] Mr. J. Payeng, learned Standing Counsel on the other hand submits that the NRC has not been finalized yet and therefore, the same cannot be relied upon by the petitioners. He submits that as per Clause – 7 of the Schedule under Rule 4-A(4), the local Registrar of Citizen Registration after disposal of claims and objection shall prepare and publish a supplementary list for inclusion or deletion of names as the case may be and thereafter, the Registrar General of Citizens Registration shall publish the final National Register of Indian Citizens in the State of Assam. Since the Registrar General has not accepted and published the final National Register of Indian Citizens in the State of Assam, the list published on 31.08.2019 cannot be acted upon or relied upon by the petitioners to claim their citizenship. He submits that at any rate, the petitioners during the proceedings before the Foreigners Tribunal and even in the writ proceedings had not pleaded that they have other relatives who are citizens of India

and therefore, the claim of the petitioners at this stage cannot be entertained. He submits that the Voters List of 1966 and 1970 were duly considered by the Foreigners Tribunal. Therefore, there being no error apparent on the face of the record, the instant Review Petition is not maintainable. In support of his submission, the learned Standing Counsel relies upon the case of *Kamlesh Verma v. Mayawati & Ors. (2013) 8 SCC 320*.

[7.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record. It is the case of the petitioners that the Foreigners Tribunal as well as this Court did not give any finding on the documents namely, Voters List of 1966, 1970 and the land Jamabandi in the name of father Abdul Rashid and therefore, the same is an error apparent on the face of the record. It may be seen that this Court had indeed considered the Voters List of 1966 and 1970 notwithstanding the opinion rendered by the Foreigners Tribunal. The said consideration and appreciation made by this Court are in paragraph Nos. 13 to 18 of the Judgment & Order dated 31.01.2018. The same may be abstracted below for ready perusal:-

“13. Petitioners filed a common written statement. In so far petitioner No. 1 is concerned, he stated that name of his father was Ajid and that of his grandfather was Kalu Khan. Grandmother’s name was Samala Bibi and their names had appeared in the National Register of Citizens (NRC) of 1951 as also in the voters lists of 1966 and 1970. It was also stated that petitioner No. 1 was serving as a Grade-IV employee under the PWD, Morigaon Rural

Road Division. Similar statements were made by petitioner No. 3, brother of petitioner No. 1. In so far petitioner No. 2 is concerned, she stated that she was born on 1.3.1978 at village Nagabandha under Laharighat Police station in the district of Morigaon. Name of her father was Rashid Bhuyan whose name had appeared in the Voters lists of 1966 and 1970.

14. Petitioner No.-3 deposed as DW-1. He was also cross examined. On the other hand, two witnesses deposed on behalf of the State and proved the enquiry report on the basis of which the reference was made.

15. Proceeding to the Exhibits, we find that Exhibit Ka(1), Kha (2) and Ga (3) are school transfer certificates. In so far Exhibit-1 is concerned, it is a transfer certificate dated 12.1.1989 issued by the Headmaster of Laharighat High School certifying that Md. Siraj Ali(Petitioner No.1) was the son of Md. Abdul Azit, village Bagalipara under Laharighat police station and that as per admission register, his date of birth was 10.7.1973.

15.1. Exhibit-2 is a transfer certificate dated 28.9.2005 issued by the Headmaster, Milanpur High School certifying that Sahidul Islam (petitioner No.3) was the son of Md. Ajid Ali of village-Bagalipara Gaon under Laharighat police station in the district of Morigaon and that as per admission register, his date of birth was 28.3.1984.

15.2. Exhibit-3 is a transfer certificate dated 6.3.2007 issued by Head Master, Milanpur ME School certifying that Miss. Samiun Nahar (petitioner No.2) was the daughter of late Rashid Bhuyan of Nagabanda village under Laharighat police station in the district of Morigaon. According to the admission register of the school, her date of birth was 1.3.1978.

15.3. Even if we ignore belated issuance of these certificates and the discrepancies in the names particularly in the name of the father of petitioner Nos. 1 and 3 i.e. Md. Abdul Azid in Exhibit-1 and Md. Azid Ali in Exhibit-2 as against the pleadings in the written statement that father of petitioner No.1 and 3 was Azid, the fact remains these certificates were not proved in accordance with law. In *Birad Mal Singhvi vs Anand Purohit* reported in 1988 (supp) SCC 604, it has been held that by the Supreme Court date of birth recorded in school certificate or school register would have no evidentiary value unless the person who made the entry or who gave the information relating to date of birth is examined. It has further been held that date of birth mentioned in the school register or school certificate would have no probative value unless either the parents are examined or the person on whose information the entry was made is examined. In the absence of such evidence, the documents produced to prove the age of the certificate holder would have no evidentiary value. In the present case, none of the above persons tendered evidence, not to speak of production of the admission registers, before the Tribunal to prove the contents of the certificates. That being the position, these three documents would be of no assistance to the petitioners.

16. In so far Exhibit-Gha (4) is concerned, it is stated to be a copy of NRC, 1951, which was rejected by Tribunal on the ground of discrepancies in the names. That apart, the authority who certified Exhibit-Ka is not at all legible. Moreover, the two relevant names which appeared in Exhibit-4 were Kalu Khan, son of Sadir and Ajid, son of Kalu. But in Exhibit-Unga (5), which is an extract of the Voters lists of 1966, the name of the sole voter was Kalu Sheikh, son of Sahari, aged 49 years. Not only there was discrepancy in the

name of Kalu Khan (Kalu Sheikh), there was discrepancy in the name of the father as well i.e. Sadir (Sahiri). Then again in Exhibit-Ja(6) (Voters list of 1970), the name which appears is A Rashid, son of Sayed Ali, aged 27 years whereas according to petitioner No.2, name of her father was Rashid Bhuyan. There is no documentary evidence or explanation certifying that Mr. A Rashid and Rashid Bhuyan is one and the same person.

17. The extracts of subsequent Voters lists only discloses Siraj Ali and Sahidul Islam to be son of Ajit or Ajit Ali. That apart, contents of these voters lists (certified copies) were not proved vis- a-vis the primary evidence i.e., the original copies of the voters lists on production and proof by the custodian of such primary evidence. To that extent, these exhibits (voters lists) remained unproved. Thus, there are no admissible evidence to establish linkage of petitioner Nos. 1 and 3 with Ajit or Ajit Ali or Abid Ali relatable to a period prior to 25.3.1971 which is the cut-off date for identification of foreigners in the State of Assam. Similarly, in the case of petitioner No.2, there is also no admissible evidence on record to establish her linkage with Rashid Bhuyan or A Rashid whom she claims to be her father.

18. Net result of the above discussion is that petitioners had failed to discharge their burden under Section 9 of the Foreigners Act, 1946 to prove that they were not foreigners but citizens of India. Under such circumstances, we concur with the view taken by Tribunal and find no ground to interfere with the same."

[8.] From the above abstract, it may be seen that if the claim of the petitioners in the instant Review Petition is to be accepted, the same would result in rehearing of

the Writ Petition afresh, which is otherwise the jurisdiction of an Appellate Court and not a Review Court.

[9.] The learned Senior Counsel for the petitioners has claimed that the final NRC had been published on 31.08.2019 and in view of the observations made by the Apex Court in *Abdul Kuddus* (supra), the claim of the petitioners should be re-examined as their relatives had been included in the final NRC. In this regard, it may be seen that the publication of the supplementary list of NRC after examination of claims and objections under paragraph No. 6 (3) of the Schedule under Rule 4-A(4) of the Rules of 2003 is to be done by the local Registrar of Citizens Registration. Thereafter, the Registrar General of Citizens Registration is required to publish the final National Register of Indian Citizens in the State of Assam. There are no materials placed before us to show that the Registrar General of Citizens Registration has accepted the publication of supplementary list by the local Registrar and published the final list. In the absence of such exercise, the final NRC, which is relied upon by the petitioners cannot be accepted to be a ground for reviewing the Judgment & Order dated 31.01.2018 passed by this Court. Further, as regards the case of *Abdul Kuddus* (supra), relied upon by the petitioners, it may be seen that the question of the person aggrieved having liberty to invoke writ jurisdiction or even review jurisdiction of the High Court as well as the Supreme Court would arise when there are contradictory decisions/opinions rendered by the Foreigners Tribunal in cases of near family members. In the present case, no two (2) contradictory decisions or opinions in

respect of family members of the petitioners have been produced before us to attract invocation of review jurisdiction. Therefore, the case relied upon by the petitioners cannot render them any assistance.

[10.] The Apex Court in the case of *Kamlesh Verma* (supra), summarized the principles under which a review will be maintainable and also when the same will not be maintainable. Paragraph Nos. 20.1 and 20.2 of the said judgment may be abstracted hereunder:-

“20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki¹⁸ and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius¹⁹ to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.²⁵

20.2. *When the review will not be maintainable:*

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

[11.] Coming to the present case, it may be seen from what has been projected by the petitioners, they have failed to make out any case so as to persuade this Court to invoke its review jurisdiction in terms of the principles as abstracted herein above. Therefore, upon due consideration of the projection made by the petitioners in its entirety, we do not find any ground to recall the Judgment & Order dated 31.01.2018 and accordingly, the Review Petition is dismissed.

JUDGE

JUDGE

Comparing Assistant