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

Case No. : WP(C)/5806/2021

ROFIKUL ISLAM
S/O. LT. AHMED ALI @ AHMED ALI, ABHAYAPURI TOWN, WARD NO.IV, P.S. ABHAYAPURI, DIST. BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILAK MARG, 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 DEPTT.
DISPUR
GUWAHATI-06.

4:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZEN
GS ROAD
BHANGAGARH
GUWAHATI-781005.

5:THE MEMBER

FOREIGNER/S TRIBUNAL
BONGAIGAON NO.2 AT ABHAYAPURI
BONGAIGAON
ASSAM-783384.

6:THE SUPDT. OF POLICE (B)

BONGAIGAON
ASSAM-783380

Advocate for the Petitioner : MD S HOQUE, MR. M DEKA

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

05.11.2026

(K. R. Surana,J)

Heard Mr. S. Hoque, learned counsel for the petitioner as well as all the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely Rofikul Islam, has assailed the impugned opinion dated 20.01.2021, passed by the learned Member, Foreigner's Tribunal, Bongaigaon No.2, Abhayapuri, in Case No BNGN/FT-2/APR/61/2017, arising out of Reference BNGN IMDT Case No. 57/2000, by which the petitioner was declared as an illegal migrant.

3. The learned counsel for the petitioner by referring to the written statement and the evidence of the petitioner as DW-1 has submitted that a false case has been made out against the petitioner. He is a *bonafide* citizen of the Country and son of late Ahmed Ali @ Amed Ali, a foreign resident of Village-Balapathar P.S.-Baghbar in the then Kamrup District, now Barpeta district and his name is recorded in the voters list of 1966 (Exhibit-A). The name of his father appeared as Amed Ali in the voters list of 1970 (Exhibit-B) of the same village. The name of the petitioner's parents and other family members appeared in the voters list of 1985 (Exhibit-C) as Amed Ali, son of Hashim, Rahima Khatun, wife of Amed of the same village. It is also submitted that the father of the petitioner died in the year 1990 and his mother died in the year 1987 and at that time of his father's death, he was residing at the village-Balapathar but after his father's death, his elder brother tortured him and therefore, he left the home and settled at Abhayapuri town and thereafter his name appeared in the voters list of 2008 (Exhibit-D), as a resident of Abhayapuri town, Ward No. IV (Tengnamari) under P.S.-Abhayapuri, Sub-Division- North Salmara, under 35 No. Abhayapuri South (SC) L.A.C. He married in the year 1995 with Musst. Asida Begum. His name also appeared in the voters list of 2011(Ext.E), from 2015 (Ext.F), 2016 (Ext.G) and 2017 (Ext.H). The petitioner was issued a resident certificate by the Vice Chairman of Abhayapuri Town Committee (Ext.I). The petitioner also relies on the family Identity card (Ext.J) issued in his name and he also relies on the *Gaonburah* certificate (Exhibit-K), issued by the *Gaonburah* of Village-Balapathar, stating that the petitioner is the son of late Amed Ali. Reliance was also placed on the Bank savings account pass book in the name of the petitioner, where he was referred as son of Ahmed Ali. Reliance was also placed on a Elector photo

identity card (EPIC for short) in the name of the petitioner. In support of the discrepancy in the names, the petitioner relies on a self-declaratory affidavit regarding correct name of his father.

4. Accordingly, it is submitted that the petitioner has been able to make out a case and the learned Tribunal had casually placed the pleadings and evidence on record treating the petitioner to be a foreigner which is contrary to the decision of the Supreme Court of India in the case of *Sarbananda Sonowal Vs. Union of India and Ors, (2007) 1 SCC 174*. Accordingly, the learned counsel for the petitioner prays for setting aside the impugned opinion.

5. Per contra, the learned standing counsel for the Border and FT matters has submitted that the name of the petitioner appears for the first time in the voters list of 2008 as Rofikul Islam, son of Ahmed Ali, where his age is 33 years. It is submitted that in so far as the projected father of the petitioner is concerned, after the voters list of 1966 and 1970, after a gap of 15 years, the voters list presented as Ext.C is of Amet Ali, son of Hashim as the name of the fathers of the voter in the voters list of 1966 and 1970 is Hasumuddin. It is further submitted that in so far as the Gaonburah's certificate is concerned, which is the only link document, the same contains the State emblem which makes the said (Ext.K) inadmissible in evidence. Moreover, it is submitted that the *Gaonburah* was not called and examined, and therefore, the Gaonburah's certificate and the contents thereof has not been proved in accordance with law. Accordingly, it is submitted that the petitioner had failed to establish his link with Amed Ali or Amet Ali, who is a resident of Village-Balapathar and whose name appeared in the voters list of 1966, 1970 and 1985 respectively. Hence, it is submitted that no interference with the impugned opinion is called for.

6. Considering the submissions made at the Bar, also perused the

Tribunal records, which were called for.

7. On a perusal of the Tribunal records, it appears that the exhibited voters list of 1966 (Ext.A) and 1970 (Ext.B) contains the name of her single voter as Amed Ali, son of Hasumuddin whose age is 45 years in 1966 and 49 years in the year 1970. The voters list of 1985 (Ext.C) contains five names but the petitioner has projected his relation only with Amet Ali, then aged 60 years and Rohima Khatun, 45 years of age as his father and mother respectively. The petitioner has not stated about his relationship, if any, with the other three voters whose names also appear in that voter's list. In his written statement, it is seen that the petitioner has made no reference to his siblings, if any, of his projected grandfather and siblings, if any, of his father, and siblings, if there be any, of his own. His name appeared in the voters list of 2018 and thereafter, the petitioner has referred to his marriage with Arsida Begum in the year 1995 and thus, the petitioner has in his written statement and in evidence on affidavit, has not made relevant disclosures.

8. As submitted by the learned standing counsel for the Border and FT matters, on a perusal of the certificate of the *Gaonburah* (Ext.K), it is seen that the same contains the State Emblem, which *Gaonburah* is not authorized to use. In that regard it would appropriate to refer to the decision of the Court in the case of *Sajeda Khatun Vs. Union of India and Ors. 2018 (4) GLT 696* where it has been held that under Rule 10(2) of the State Emblem of India (Regulation of Use) 2017 framed under the State emblem of India Prohibition of Improper Use Act, 2005 an unauthorized use of State Emblem has rendered the certificate holding inadmissible in evidence. Accordingly, there is no reason for this Court to take a view other than what has already been held by this Court. Therefore, if the *Gaonburah* certificate (Ext. K) is discarded, then there is no other

document to link the petitioner to her projected father, in as much as the petitioner and her projected father were never voters together and there is no other document where the names of both persons appear together. Insofar as the name of the projected father of the petitioner in the voters list of 1966 (Ext.A) and 1970 (Ext.B) is concerned, the name of the projected father of the petitioner is Amed Ali, son of Hasumudidin and the name of the father of the petitioner appearing in the name of voters list of 1985 (Ext.C) is Amet Ali, son of Hasim and in the voters list of 2008 (Ext.D), 2011 (Ext.E) 2015 (Ext.F) 2016 (Ext.G) 2017 (Ext.F), the name of projected father of voter is Ahmed Ali.

9. In the present case, even though the issue pertains to the citizenship of the petitioner, a mere declaration made by her in the affidavit cannot be read as a proof that "Amed Ali", whose name appears in the voters' lists of 1966 and 1970, and "Amet Ali", whose name appears in the voters' list of 1985, are one and the same person and that the same person is the father of the voter whose name appears in the voters' lists of 2008, 2011, 2015, 2016 and 2017 as a resident of Abhayapuri Town.

10. The residential certificate issued by the Vice Chairman, Abhayapuri Town Committee in favor of Rofikul Islam, son of late Amed Ali. The said certificate was issued on 14.02.2017 whereas the reference against the petitioner was made before the Illegal Migrants (Determination) Tribunal, Bongaigaon vide letter dated 19.09.2000, issued by the Superintendent of Police (Border), Bongaigaon, which was then transferred to the Foreigners Tribunal Bongaigaon No.2, Abhayapuri and the first initial order was passed on 25.01.2017. While the petitioner was residing in Abhyapuri Town, none of the exhibited documents reflects the name of his father as Amed Ali, but his name is appears Ahmed Ali in the exhibited documents.

11. In this case the author of the said residential certificate (Ext.I.) was not examined to prove its contents with reference to any contemporaneous records. Her family identity card (Ext.J) Bank passbook (Ext.L) and EPIC (Ext.N) are also not proof of citizenship, or proof to establish parentage. In respect of the legal proposition that EPIC and PAN Card are not valid piece of evidence without supporting records, we may refer to the decision of this Court in the case of *Md. Babul Islam Vs. Union of India & Ors., W.P.(C) 3547/2016*, decided on 09.05.2018. Moreover, in the case of *Abdul Sheikh Vs. Union of India & Ors., W.P.(C) No. 6871/2016,* decided on 29.03.2018, this Court held that bank statement and bank pass book are not proof of citizenship.

12. Hence, the Court is of the considered opinion that the petitioner has failed to establish his link with his projected father, who was a resident of different village.

13. Accordingly, no interference is called for in respect of the opinion dated 20.01.2021. The petitioner has failed to discharge his burden under Section 9 of the Foreigners Act, 1946. The petitioner has not been able to make out the case for interference with the impugned opinion dated 20.01.2021. Accordingly, the writ petition stands dismissed. The parties shall bear their own cost.

14. The consequences of the opinion dated 20.01.2021, passed by the learned Member, Foreigner's Tribunal, Bongaigaon No.2, Abhayapuri, in Case No BNGN/FT-2/APR/61/2017, arising out of Reference BNGN IMDT Case No. 57/2000, shall follow.

15. The Registry shall return the records along with a copy of the order to be made a part of the record by the said learned Tribunal.

16. Interim bail granted to the petitioner by order dated 25.03.2022, stands revoked and recall.

17. The learned standing counsel for the FT and Border mattes shall transmit a downloaded copy of this order to the concerned authority for the record.

JUDGE **JUDGE**

Comparing Assistant