

(2023) 01 GAU CK 0027

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3580 Of 2019

Abu Samad Ali

APPELLANT

Vs

Union Of India And 8 Ors

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Citation : (2023) 01 GAU CK 0027

Hon'ble Judges : Achintya Malla Bujor Barua, J;Arun Dev Choudhury, J

Bench : Division Bench

Advocate : D Ghosh

Final Decision : Allowed

Judgement

1. Heard Ms. H Betala, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India, Ms. A Verma, learned counsel for the respondents no. 2, 5, 7, 8 and 9 being the authorities under the Home Department of the Government of Assam, Mr. A Ali, learned counsel for the respondent no. 3 being the Election Commission of India and Ms. K Phukan, learned counsel for the respondent no. 6 being the Deputy Commissioner, Goalpara.

2. The petitioner Abu Samad Ali was referred to the Foreigners Tribunal Kamrup (Metro) No. 2 at Guwahati for rendering an opinion as to whether he entered the State of Assam subsequent to 25.03.1971, which resulted in the registration of FT Case No. 568/2015. 7.

The Tribunal in its order dated 04.05.2019 in FT Case No. 568/2015 declared the petitioner as foreigner who entered the State of Assam subsequent to 25.03.1971. Being aggrieved this writ petition is instituted.

3. Before the Tribunal the petitioner exhibited the voters' list of village 222 Nayapara Part II, PS Goalpara, Circle Matia in the Goalpara district which contained the names of Mosiruddin Seikh, S/O Janab Ali Mondal at Sl. No. 66 and

Jabedan Nessa, W/O Mosiruddin Sheikh at Sl. No. 69. The petitioner also exhibited the voters' list 1970 of village Nayapara Part I which contained the name of Mosiruddin Munchi, S/O Jonab Ali at Sl. No. 65 and Jobedan Nessa, W/O Mosiruddin Ali at Sl. No. 68. The petitioner exhibited the voters' list of 1985 of village Nayapara Part I which contained the names of Jabedon Bewa, W/O Mosoruddin at Sl. No. 581, Harej Ali M:, S/O Mosoruddin at Sl. No. 582 and Jorina Khatun, W/O Harej at Sl. No. 583. The petitioner further exhibited the voters' list of 1989 of village Nayapara Part I which contained the names of Jabedon Bewa, W/O Mosiruddin Ali at Sl. No. 526, Harej Ali, S/O Mosiruddin Ali at Sl. No. 527, Bilaton Nessa W/O Harej Ali at Sl. No. 528 and Jorina Nessa, W/O Harej Ali at Sl. No. 529. The voters' list of 1997 of village Nayapara Part I contains the name of Harej Ali Mondal, S/O Mosiruddin Sheikh at Sl. No. 152 and Jarina Khatun, W/O Harejali Mondal at Sl. No. 153. The voters' list of 2010 of village Nayapara Part I is also exhibited by the petitioner which contains the name of Harej Ali Mondal, S/O Mosor Ali Mondal at Sl. 182, Jarina Khatun, W/O Harej Ali Mondal at Sl. No. 183, Abu Samad Ali, S/O Harej Ali Mondal at Sl. No. 184.

4. To substantiate the claim of the petitioner the petitioner also adduced the evidence of Harej Ali Mandal @ Harej Ali. In paragraph 5 of the evidence-in-chief, Harej Ali Mandal @ Harej Ali, S/O Mosiruddin Munshi @ Mosiruddin Seikh stated that his father is Mosiruddin Munshi @ Mosiruddin Seikh and that Mosiruddin Munshi @ Mosiruddin Seikh was the son of Jonab Munshi and Khobiron Bewa and out of the wedlock two children were born namely Jomiruddin Munshi and Mosiruddin Munshi @ Monsiruddin Seikh. In paragraph 12 of the evidence, Harej Ali Mandal @ Harej Ali stated that he married twice, first with Jorina Khatun the mother of the petitioner Abu Samad Ali and out of the wedlock six children were born and for the second time with Bilatan Nessa and out of the wedlock one children namely Billal Ali was born.

5. In the questions put by the Tribunal to Harej Ali Mandal @ Harej Ali, no suggestions were made that Mosiruddin Munshi @ Mosiruddin Seikh are two different persons or that Harej Ali Mandal @ Harej Ali are also two different persons.

6. The evidence of Abu Kamal Azad being the Superintendent In-Charge of Nayapara High School was also brought in by the petitioner. The Superintendent In-Charge of Nayapara High School Abu Kamal Azad in his deposition stated that the certificate issued from his school provided that the father of the petitioner is Harej Ali Mandal @ Harej Ali and that the said information had been extracted from the admission register of the school, contents of which were also exhibited in the Tribunal.

7. The petitioner also brought in the evidence of Chaleha Khatun, W/O Majibar Akanda who by profession is 'dhai-maa' (birth attender). Chaleha Khatun in her deposition stated that the father of the petitioner Harej Ali Mandal @ Harej Ali had married Jorina Nessa and out of the wedlock six children were born and out

of the second marriage with Bilatan Nessa another children Bilal Ali was born. Chaleha Khatun also deposed that she had assisted the birth process of the petitioner and had attended to his mother Jarina Nessa at the time of his birth. In the questions put by the Tribunal to Chaleha Khatun it had had not been controverted in any manner that she had not assisted the birth process of the petitioner and that Jarina Khatun is his mother and Harej Ali Mandal @ Harej Ali is his father and further there is no cross examination by the state authorities.

8. From the voters' list of 1966, 1970, 1985, 1989, 1997 as well as of 2010 of village Nayapara Part I, it is established that the grandfather of the petitioner was Mosiruddin Munshi @ Mosiruddin Seikh and that his father was Harej Ali Mandal @ Harej Ali and his mother was Jarina Khatun. The evidence of Harej Ali Mandal @ Harej Ali clarifies the situation that Mosiruddin Munshi @ Mosiruddin Seikh are one and the same person although in one of the voters' list he is shown as Mosiruddin Sheikh. But there is nothing on record to show that it is the stand of the respondents in any manner that Harej Ali Mandal @ Harej Ali is not a citizen of India. The evidence of Chaleha Khatun the birth attender clearly established that the petitioner was born to Jarina Khatun and his father was Harej Ali Mandal @ Harej Ali and the said evidence also remained uncontroverted.

9. From the aforesaid discussions, it can be concluded that the petitioner is not a person who entered the State of Assam after 25.03.1971. The only reasoning by the Tribunal in its opinion dated 04.05.2019 in FT Case No. 568/2015 is that there appears to be a minor discrepancy in the name of Mosor Ali Mondal from Mosiuruddin Sheikh or Mosiruiddin Munshi and that of Harej Ali Mandal and Harej Ali and therefore, the claim of the petitioner is disbelievable. But be that as it may, as it is not the stand of the State that Harej Ali Mandal @ Harej Ali is not a citizen of Assam and there being clear evidence on record that the petitioner is the son of Harej Ali Mandal @ Harej Ali, we are of the view that there is sufficient materials to indicate that the petitioner is not a person who entered after 25.03.1971. It is accordingly so declared and all the entitlements of the petitioner under the law being not a person who entered to the State of Assam subsequent to 25.03.1971 be provided to the petitioner. Accordingly, the order dated 04.05.2019 passed in FT Case No. 568/2015 is set aside.

10. Send back the LCR.

Writ petition stands allowed in the above terms.