

(2023) 01 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3530 Of 2019

Anil Saha

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Citizenship Act, 1955 — Section 6A(2)

Citation : (2023) 01 GAU CK 0021

Hon'ble Judges : N. Kotiswar Singh, J; Arun Dev Choudhury, J

Bench : Division Bench

Advocate : B. Kaushik, A. Kipanjal, S. Hazarika, L. Devi, R.K.D. Choudhur, G. Sarma, U. Das

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J

1. Heard Mr. B. Kaushik, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy. SGI for respondent No.1; Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal for respondent Nos.2 & 3 and Ms. U. Das, learned Additional Senior Government Advocate, Assam for respondent No.4.

2. In this petition, the petitioner has challenged the order dated 14.12.2018 passed by the learned Foreigners Tribunal No.2, Dhemaji at Shilapathar in F.T. Case No.333/2017 by which the petitioner was declared to be a foreigner of post 25.03.1971 who entered into the territory of India (Assam) after 25.03.1971 without any valid document.

3. The petitioner has challenged the impugned order dated 14.12.2018 on the ground that there is a specific averment made by the petitioner before the learned Tribunal supported by the certificate issued by the concerned authority that he and his father entered India on 05.03.1962.

4. It has been submitted that the petitioner has been staying in Assam continuously since their entry in India on 05.03.1962 and as such, he is entitled to be deemed to be a citizen of India in terms of Sub-Section (2) of Section 6A of the Citizenship Act, 1955.

5. In order to appreciate the said submission advanced, we have perused the original records which have been requisitioned and placed before us.

6. On perusal of the records, it appears that the petitioner had made a specific statement in para No.5 thereof of the written statement that the proceedee along with the proceedee's Late father Anath Bandhu Saha, Late mother Latika Saha, uncle Late Pryonath Saha had entered India on 05.03.1962, during which period, the proceedee's age was approximately 14 years as certified by the Deputy Commissioner, United Khasi & Jantia Hills, Shillong, Relief and Rehabilitation Branch and thereafter, his parents proceeded towards the village in Howli at Barpeta district.

7. The petitioner, of course, has relied on other documents also as mentioned in the written statement.

8. The petitioner has examined himself as OPW-1 before the Tribunal who reiterated his statement made in the written statement.

9. We have examined the cross-examination of the OPW-1 by the State in which nothing has been mentioned to challenge the validity or genuineness of the said certificate issued stating that he had entered India on 05.03.1962.

10. Under the circumstances, we are of the view that if the petitioner after entering India on 05.03.1962, had shifted to Assam as submitted in his written statement which has not been challenged, the case of the petitioner will be covered by Sub-Section(2) of Section 6A of the Citizenship Act, 1955 which provides as follows,

"6A. Special provisions as to citizenship of persons covered by the Assam Accord.

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.....

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966."

11. Under the circumstances, we are of the view that the impugned opinion dated 14.12.2018 rendered by the learned Foreigners Tribunal No.2, Dhemaji at Silapathar in F.T. Case No.333/2017, does not appear to be based on record but contrary to the documents which have been produced before the learned Tribunal

and also before us.

12. We are satisfied that the petitioner has been able to make out a case that his case comes under the category of persons covered under Sub-Section (2) of Section 6A of Citizenship Act, 1955.

13. For the reasons discussed above, the present petition is allowed by setting aside the impugned order dated 14.12.2018 passed by the learned Foreigners Tribunal No.2, Dhemaji at Silapathar in F.T. Case No.333/2017.

14. Accordingly, the petitioner, Sri Anil Saha, Son of Lt. Anath Bandu Saha, resident of village Silapathar, Natun Gaon, P.O. & P.S.- Silapathar, Mouza- Sisi, District Dhemaji, Assam shall be deemed to be an Indian in terms of Sub-Section (2) of Section 6A of the Citizenship Act, 1955.

15. With the above observations and directions, the present petition stands allowed.

16. LCR be remitted forthwith to the concerned Foreigners Tribunal.