

(2021) 11 GAU CK 0048

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4932 Of 2018

Anup Biswas

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Citation : (2021) 11 GAU CK 0048

Hon'ble Judges : N. Kotiswar Singh, J; Malasri Nandi, J

Bench : Division Bench

Advocate : S. Das, R. Mazumdar, J. Payeng, A.I. Ali, K. Phukan

Final Decision : Disposed Of

Judgement

1. Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned special counsel, FT, appearing for the respondent Nos.2, 7 and 8; Mr. K.K. Parasar, learned CGC, appearing for respondent No.1 and also appearing on behalf of standing counsel, NRC, for respondent No.4; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent Nos.3 and 6 and Ms. K. Phukan, learned Government Advocate, Assam, appearing for respondent No.5.

2. Considering the nature of the case, we are of the view that the present petition can be disposed of without touching upon the merit of the case as regards the appreciation of evidence and finding thereof, for the reason that the learned Tribunal has passed a cryptic order by holding that the petitioner/opposite party has not proved the exhibits as per law, which in our view cannot be sustained in law.

3. The present petition has been filed challenging the opinion of the learned Tribunal dated 27.06.2018 passed by the learned Member, Foreigners Tribunal, Kamrup (Metro) No.2, Guwahati, Assam, in F.T. Case No.357/2017 by which the petitioner was declared a foreigner of post 24.03.1971 stream.

4. We have also gone through the records received from the Tribunal.

5. Perusal of the impugned order dated 27.06.2018 passed by the Foreigners' Tribunal, Kamrup (Metro) No.2, Guwahati, would show that though the learned Tribunal had elaborately described the various documents exhibited by the petitioner/proceedee, while coming to a conclusion, the learned Tribunal made merely the following observations:-

"In determining citizenship a person's continuous existence in a state is a main factor. From continuous presence legacy of a person can be drawn. Here the Opposite party has got his name included at the age of 31 yrs when minimum age for inclusion in the voter list is 18 yrs from 1989.

The Opposite party has not proved the exhibits as per law.

The documents submitted, exhibited and projection made thereof are based on sole declaration of the Opposite party and without any corroboration it is not trustworthy and reasonable to accept those declaration.

Considering above discussion this Tribunal concludes that the Opposite party failed to establish that he or his ancestors are residing in Assam, India prior to 24th March 1971 and form opinion that the Opposite party Anup Biswas S/O Late Pradip Biswas a resident of Village-Bardalani under Mayang Police Station, District-Morigaon, Assam is a Foreigner from Bangladesh who illegally entered in Assam, India after 24th March 1971."

6. We are of the view that the aforesaid discussion of the documents relied upon by the petitioner to prove his case, falls short of the requirement of law. The learned Tribunal ought to have discussed the aforesaid exhibits as to its admissibility, reliability, etc., which unfortunately does not appear to have been done. In our opinion there was no proper appreciation of the evidences on record which was required to be done. Accordingly, we are of the opinion that the matter would require fresh reconsideration by the learned Tribunal of the aforesaid documents/evidences adduced by the petitioner and issue a speaking order as regards the admissibility, reliability of the aforesaid documents and accordingly, give its opinion to the reference made.

7. For the reasons discussed above, the present petition is allowed by setting aside the impugned opinion dated 27.06.2018 passed by the learned Member, Foreigners Tribunal, Kamrup (Metro) No.2, Guwahati, Assam, in F.T. Case No.357/2017 and remand the matter to the learned Tribunal with the direction to the learned Tribunal to pass a fresh opinion by analysing the admissibility, reliability, etc. of the aforesaid evidences/documents relied upon by the petitioner before rendering its opinion. The petitioner will, accordingly, appear before the learned Tribunal on or before 22.12.2021 and after hearing the petitioner, the learned Tribunal will pass a fresh order.

8. Learned counsel for the petitioner submits that Annexure-1 to this petition is a photocopy of the communication regarding imprisonment of one Satyendra Biswas, who the petitioner claims to be his grandfather and the petitioner

submits that he now wishes to file the original of the said certificate/document before the Tribunal as only a copy of it was filed before the Tribunal. The petitioner may do so by filing necessary application before the Tribunal in that regard.

9. With the above observation and direction, the petition stands disposed of.

10. LCR be remitted immediately to the concerned Foreigners' Tribunal for the doing the needful.