

(2019) 02 GAU CK 0063
In the Gauhati High Court
Case No : Writ Petition (C) No. 8516 Of 2018

Atabur Rahman

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 20-02-2019

Acts Referred:

Citizenship Act, 1955 — Section 6A(3), 6A(3)(b), 18

Citation : (2019) 02 GAU CK 0063

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : H R A Choudhury

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Ms. H. Ahmed, learned counsel for the petitioner, Mr. A Ali, learned counsel for the Election Commission of India, Mr. A. Kalita, learned standing counsel for the State of Assam appearing for the Foreigners Tribunal and Border Affairs, Ms. A Verma, learned standing counsel for the authorities under the NRC as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.

2. The petitioner was referred by the Superintendent of Police (Border), Nagaon resulting in the registration of F.T. Case No.175/2000 before the Foreigners Tribunal, Nagaon. The petitioner upon receipt of notice, entered appearance, but had neither submitted any written statement nor adduced any evidence. In the circumstance, the Tribunal by the order dated 18.06.2008 had declared him to be a foreigner who had entered Assam between 01.01.1966 and 25.03.1971.

3. In spite of the order of the Tribunal, the petitioner did not register himself, resulting in a situation where he is now liable to be deported.

4. The law as regards the registration of a person declared to have entered the

State of Assam between 01.01.1966 and 25.12.1971 is provided in Section 6A(3) of the Citizenship Act of 1955. Section 6A(3) provides as follows:-

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who-

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner, shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority (hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom. Explanation.-In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall,-

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

5. A reading of the provision of Section 6A(3)(b) shows that every person of Indian origin, who came to Assam on or after 01.01.1966, but before 25.03.1971 from the specified territory and has since the date of his/her entry into Assam been ordinarily resident in Assam and has been detected to be a foreigner, shall register himself or herself in accordance with the Rules made by the Central Government for the purpose. A core requirement of being eligible to be registered is that there also has to be a conclusion arrived at that the person concerned, who came after 01.01.1966 but before 25.03.1971 and has been declared to be a foreigner, had mandatorily resided in the State of Assam continuously since the date of his or her entry into Assam. The requirement of being ordinarily a resident in Assam since the date of his/her entry into Assam is a condition precedent for being eligible to be registered under Section 6A(3) of the Citizenship Act of 1955. In the absence of a satisfaction of the condition precedent of being a resident in the State of Assam continuously since the date

of the initial entry between 01.01.1966 and 25.03.1971, a person would not be eligible to be registered under Section 6A(3) of the Indian Citizenship Act of 1955.

6. In the instant case, we take note of that there is no conclusion being arrived at by the Tribunal at Nagaon that although the petitioner may have entered the State of Assam between 01.01.1966 and 25.03.1971, he had continuously been a resident in the State of Assam since the date of the initial entry.

7. In the circumstance, we are of the view that the interest of justice will be met if the petitioner is allowed to appear before the Tribunal for leading appropriate evidence that he had continuously been a resident in the State of Assam since the date of his initial entry between 01.01.1966 and 25.03.1971.

8. Accordingly, the petitioner shall now appear before the Tribunal at Nagaon on 18.03.2019 for leading appropriate evidence that he had been continuously a resident in the State of Assam since the date of his initial entry between 01.01.1966 and 25.03.1971. Upon such evidence being led, the Tribunal shall arrive at its conclusion as regards its acceptability and pass a reasoned order thereon. If the Tribunal arrives at a conclusion that the petitioner had continuously resided as indicated above, appropriate direction be passed requiring him to register before the Foreigners Regional Registration Officer at Nagaon.

9. The writ petition stands allowed to the extent indicated above.