
(2019) 03 GAU CK 0052
In the Gauhati High Court
Case No : Writ Petition (C) No. 5568 Of 2018

Bakkar Ali

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0052

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

Bench : Division Bench

Advocate : I Alam, A Ali, A. Kalita, A Verma, G Sarma

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. I. Alam, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. A. Kalita, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas, 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. On being referred by the Superintendent of Police (B), Darrang, Case No. FT(V) 837/2016 was registered in the Foreigners Tribunal No.5, Darrang, Mangaldai.

3. In the Tribunal, the petitioner filed the written statement taking a stand that he is the son of A. Malek of village- Dalgaon Khuti whose name appeared in the voter lists of 1966 & 1970 of village-Dalgaon Khuti under P.S. Dalgaon, district-Darrang. The petitioner also takes a stand that the name of his father A. Malek and mother Asiya Khatun appeared in the voter lists of 1966, 1970 & 1977 etc. of village- Dalgaon Khuti. A further stand is taken in the voter list of 1989 of village- Dalgaon Khuti, the name of the petitioner appeared along with Asiya

Bewa wife of A. Malek, who is claimed by the petitioner claimed to be his father.

4. Before the Tribunal, the petitioner exhibited the voter list of 1966 of village- Dalgaon Khuti containing the name of A. Malek son of Jalil, aged about 36 years and Asiya Khatun wife of A. Malek, aged about 30 years as well as the voter list of 1970 of village- Dalgaon Khuti which also contains their names. The voter list of 1977 containing the name of A. Malek son of Jalil, aged about 42 years and Asiya wife of A. Malek, aged about 32 years of village- Dalgaon Khuti was also exhibited.

5. A certified copy of 1989 voter list of village- Dalgaon Khuti was also relied upon which contain the name of Asiya Bewa wife of A. Malek, aged about 48 years and Bakkar, son of A. Malek, aged about 22 years. It is claimed that Bakkar of 1989 voter list of village- Dalgaon Khuti is the petitioner himself. Accordingly, a contention is raised that the name of Bakkar having appeared along with Asiya Bewa in 1989 voter list of village- Dalgaon Khuti and the name of Asiya Khatun having appeared along with A. Malek in the voter lists of 1966, 1970 & 1977 of village- Dalgaon Khuti, a link is established with A. Malek of voter lists of 1966, 1970 & 1977.

6. The petitioner further relied upon the deposition of DW-2 Abdul Hai resident of village- Dalgaon Khuti, aged about 75 years who had deposed that he knows the petitioner Bakkar Ali and that he is the son of A. Malek. Although the petitioner has submitted a certificate dated 21.10.2017 of the Gaonburah, amongst others, Dalgaon Khuti village but the person certifying said certificate has not been examined and hence we find it inadmissible in evidence. From the voter lists of 1966, 1970 & 1977 of village- Dalgaon Khuti and the subsequent voter list of 1989 of also village- Dalgaon Khuti, where 1966, 1970 & 1977 lists which contains the name of A. Malek and Asiya Khatun together and 1989 voter list which contains the name of A. Malek and the petitioner Bakkar Ali together, a link may have been established between Bakkar of 1989 voter list and that of A. Malek of 1966, 1970 & 1977 voter list. Further the said DW-2 had also clearly deposed that A. Malek of Dalgaon village is the father of the petitioner Bakkar Ali.

7. We have gone through the order of the Tribunal and have taken note that the Tribunal while dealing with the voter lists of 1966 & 1971 had arrived at certain calculations which shows some discrepancies in the age of the petitioner while comparing it with the materials related to NRC. By doing so, the Tribunal had declared the petitioner to be foreigner, who entered Assam after 25.03.1971, but no discussion had been made as to whether any possible link had been established through the voter lists of 1966, 1970 & 1977 of village- Dalgaon Khuti and voter list of 1989 of village-Dalgaon Khuti where the voter lists of 1966, 1970 & 1977 contains the name of A. Malek and Asiya Bewa together and 1989 voter list contains the name of Asiya Bewa wife of A. Malek and Bakkar son of A. Malek together.

8. The subsequent voter lists of 1997, 2005, 2010 etc. also shows the name of

the petitioner Bakkar Ali along with Asiya Bewa by showing Bakkar Ali to be residing in House No.188 whereas A. Malek is shown to be residing in House No.189. The evidence of DW-2 clearly provides that Bakkar Ali is the son of A. Malek of village Dalgaon Khuti and such piece of evidence was also not taking into consideration by the Tribunal.

9. As the aforesaid aspects of the matter had not been taken into consideration, we deem it to be an appropriate case for interference under certiorari jurisdiction. Accordingly, the order dated 28.05.2018 is set aside and the matter is remanded back to the Tribunal for a fresh consideration and upon such consideration a reasoned order be passed.

10. The petitioner shall appear before the Tribunal on 10.04.2019 and upon such appearance, the consideration as indicated be given within a period of 15 days therefrom.

11. It is stated that the petitioner is presently in detention camp at Tezpur and as we have interfered with the order dated 28.05.2018, we direct that the petitioner be released forthwith subject to submission of two surety bonds from two prominent persons from his village or a Government official to the satisfaction of the Superintendent of Police, (B), Tezpur, who shall verify and satisfy to itself as regards the authenticity of the two sureties to ensure his continuous presence before the authority as and when required.

12. In terms of the above, the writ petition stands allowed to the extent indicated above.