

(2023) 01 GAU CK 0026

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3527 Of 2019

Forman Khan

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Foreigners Act 1946 — Section 9

Citation : (2023) 01 GAU CK 0026

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

Bench : Division Bench

Advocate : U K Das

Final Decision : Allowed

Judgement

1. Heard Mrs. BD Sarma, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents No.1 and 6 being the Union of India and the authorities under the NRC, Ms. A Verma, learned standing counsel Foreigners Tribunal for the respondents No.2 and 4, being the authorities under the Home Department, Government of Assam as well as the Superintendent of Police (Border), Barpeta, Mr. AI Ali, learned standing counsel for the respondent No.5 being the Election Commission of India, Ms. K Phukan, learned Government Advocate for the respondent No.3 being the Deputy Commissioner, Barpeta.

2. The petitioner Forman Khan was subjected to his name being marked 'D' in the voters' list of 1997 of village Belortari, PS Barpeta, Barpeta district. Accordingly a reference was made to the Foreigners' Tribunal No.1, Barpeta for rendering an opinion as to whether the petitioner is a person who had entered the State of Assam subsequent to 25.03.1971 and in the process IMDT Reference Case No.81/1997 renumbered as F.T. Case No.145/2017 was registered.

3. The Foreigners' Tribunal No.1, Barpeta by its opinion dated 05.04.2019 had opined that the petitioner could not establish that he is a bona fide citizen of India and that he had not entered India after the cutoff date i.e. 25.03.1971.

4. Before the Tribunal, the petitioner exhibited the voters list of 1966 of village Belortari, PS Barpeta of Barpeta district wherein Sl.No.215 contains the name of Sangsher Kha son of Manik kha aged about 67 years and Lil Khatun wife of Sangsher aged 45 years.

5. The petitioner also exhibited the voters list of 1970 of village Belortari, PS Barpeta, Barpeta district wherein Sl.No.296 contains the name of Sangsher Kha son of Manik Kha and Sl.No.297 contains the name of Lil Khatun wife of Sangsher. The petitioner thereafter exhibited the voters list of 1989 of village Belortari, PS Barpeta, Barpeta district wherein Sl.No.159 contains the name of Farman Khan the petitioner, showing his father to be Shangsher Khan. The petitioner also exhibited the voters list of 1997 of village Belortari, PS Barpeta, Barpeta district which is annexed as Annexure-1 and Sl.No 1033 contains the name of Forman Khan, the petitioner, showing his father to be Sangsher and Sl. No.1035, containing the name of Arman Khan showing his father to be Sangsher. The petitioner also deposed before the Tribunal and in cross had stated as extracted:

".....On oath

X X X

By Govt. Pleader

My name is Forman Khan. My father's name is Late Sangsher Khan. I born at Village-Belotari and presently residing at Belortari Village. My father dies about 38 years ago, name of my mother Late Lil Khatun, she died about 37 years ago.

My father and mother casted vote in the year 1966. I have never seen my grandfather. I casted vote in the year 1989. I have not submitted any other voter list after the year 1966 and 1970. It is not a fact that I have adduced false evidence."

6. The petitioner contends that he being the son of Sangsher Khan whose name appeared in the voters' list of 1966 and 1970 of village Belortari, PS Barpeta, Barpeta district and also his name appearing in the voters list of 1989 and 1997 also of village Belortari, PS Barpeta, Barpeta district establishes a clear link that he is the son of Sangsher Khan whose name appeared against the same village in the voters list of 1966 and 1970. A reading of the deposition of the petitioner in cross also makes it discernible that no question was put by the State authorities that Sangsher Khan of village Belortari, PS Barpeta, Barpeta district whose name appeared in the voters list of 1966 and 1970 is not the father of the petitioner or that the name of father of Forman Khan in the voters list of 1989 and 1997 of village Belortari, PS Barpeta, Barpeta district to be Shangsher Khan is different from the Shangsher Khan of the voters list of 1966 and 1970. Further the petitioner had the Gaonburah of village Belortari, P.S. Barpeta, Barpeta district to depose before the Tribunal and the Gaonburah in his deposition in chief as well as in cross stated as extracted:

".....On oath

I know the second party of this case Forman Ali. I am the Gaonburha of Dokreswar, Belortari, Gare mari habi, Gare mari Pather. The name of the second party's father is Sangsher Khan. I know the father of the second party since my childhood. The second party born at Belortari Village. The father of the second party had two son sons and three daughters. Exhibit D is the certificate issued by me and Exhibit D(1) is my signature.

XXX

By Govt. Pleader

I was appointed as Gaonburha in the year 1982. I issued the certificate by going through the voter list of the year 1966. The second party is residing nearby my house. I am maintaining the register for issuing certificate. I am maintaining the population register since the year 2017. It is not a fact that I have adduced false evidence."

7. A reading of the afore-extracted deposition of the Gaonburah of village Belortari, PS Barpeta, Barpeta district also shows that the father of the petitioner is Sangsher Khan and he knew the petitioner from his childhood and that the petitioner was born at village Belortari and further that the father of the petitioner had two sons and three daughters.

8. Arman Khan son of Shangsher Khan whose citizenship has not been doubted had also made his deposition before the Tribunal that the petitioner Forman Khan is his brother which again is consistent with the evidence of the Gaonburah that Shangsher Khan had two sons.

9. The Tribunal by its opinion dated 05.04.2019 had rejected the aforesaid evidences of the petitioner by arriving at a conclusion as extracted:

"Mere filing of some documents and picking up any name from such documents so as to establish relationship is not enough. The documents filed by the proceedee cannot be taken as legal evidence to confer Indian citizenship."

10. The Tribunal may be right in its view that mere filing of some documents and picking up any name from such documents so as to establish relationship is not enough. But at the same time, in the instant case, further materials were available that the name of the father of the petitioner as per voters list in which the name of the petitioner appeared was also available in the voters list of the same village of 1966 and 1970. Arman Khan son of Sangsher Khan had also made his deposition that the petitioner is his brother and the evidence of the Gaonburah of village Belortari, PS Barpeta, Barpeta district is also available that Sangsher Khan had two sons and that he also knew the petitioner from the childhood who was born in the same village and the said evidences of Arman Khan as well as the Gaonburah remained uncontroverted by the State authorities.

11. From the aforesaid point of view, we accept that the petitioner is able to

discharge his burden under Section 9 of the Foreigners Act 1946. Accordingly the opinion rendered by the Foreigners Tribunal-I, Barpeta dated 05.04.2019 is set aside and the petitioner is found to be not a person who had entered the State of Assam subsequent to 25.03.1971.

12. Send back the LCR.

13. Writ petition stands allowed in the above terms.