
(2019) 01 GAU CK 0031
In the Gauhati High Court
Case No : Writ Petition (C) No. 5680 Of 2016

Islam Uddin

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 17-01-2019

Acts Referred:

Citation : (2019) 01 GAU CK 0031

Hon'ble Judges : Achintya Malla Bujor Barua, J;Prasanta Kumar Deka, J

Bench : Division Bench

Advocate : Mra Hawari

Final Decision : Allowed

Judgement

A.M. Bujor Barua, J

1. Heard Mr. HRA Choudhury, learned Senior Counsel for the petitioner assisted by Mr. S Islam, Advocate as well as Ms. G Sarma, learned counsel representing respondent no. 1; Mr. A Kalita, learned counsel representing respondent nos. 2 to 4; Mr. AI Ali, learned counsel representing respondent no. 5.

2. The petitioner was referred by the Superintendent of Police (Border), Nagaon for a reference before the Foreigners' Tribunal No. 7th, Nagaon at Lanka, for adjudication as to whether he is a foreigner who had entered into India after 25.03.1971 from the specified territory, resulting in F.T./L/Case No. 62/2015 before the tribunal. The petitioner filed his written statement taking the stand that the father of the petitioner was Mubashir Ali and his mother was Korbul Nessa and that his grandfather being the father of his father was Ason Mia. Amongst various other materials that had been produced before the tribunal, the petitioner also exhibited the voters' list of 1966 (Ext. 2) of village Charingpathar of Mouza Kapabari in the district of Nagaon wherein the name of Mubashir Ali appears at Sl.No. 1007 showing the name of his father to be Ason Mia having the age 48 years at that relevant time. The voters' list of 1966 was exhibited as Exhibit 2 which also shows the name of the mother of the petitioner i.e. Korbul

Nessa at Sl.No. 1008 by showing her to be wife of Mubeshir Ali having the age 25 years.

3. The voters' list of 1970 was exhibited as Exhibit 3 showing Mubeshir Ali at Sl.No. 999 having age 52 years and Korbul Nessa at Sl.No. 1000 having the age 29 years.

4. The petitioner further exhibited the voters' list of 1997 as Exhibit 5 in respect of Charingpathar village wherein the name of Mubashir Ali appears at Sl.No. 164, House No. 60 showing his father to be Ason and his age to be 60 years. The name of Korbul Nessa also appears at Sl.No. 165 showing her to be the wife of Mubashir Ali and having age 50 years. At Sl.No. 166, the name of Islam Uddin is shown with his father's name as Mubashir. The petitioner has led evidence that in respect of the name at Sl.No. 166 of voters' list of 1997 is the petitioner himself.

5. Similarly, the voters' list of 2005 in respect of Charingpathar village has also been exhibited as Exhibit 6 showing Korbul Nessa, wife of Late Mubashir Ali at Sl.No. 229 having the age of 55 years and Islam Uddin at Sl. No. 230 being the son of Late Mubashir Ali and his age was shown as 37 years. The petitioner also relies upon the Exhibit 8, School Certificate to show that he is the son of Mubashir Ali.

6. The learned tribunal by order dated 31.08.2016 in F.T./L/Case No. 62/2015 in paragraphs no. 4 & 8 respectively had concluded as under:

"4. Exts- 2 and 3 are the certified copies of the voter lists of the year 1966 and 1970 which contains the names of OP's parents being the resident of village Charinghi Pathar P.S. Murajhar showing the OP's father's age as 48 years and 52 years respectively. In terms of Ext. - 1 the OP's father's age should have been 39 years instead of 48 years in 1966 (Ext.- 2) and 43 years instead of 52 years in 1970 (Ext.-3). The age gap between, OP's parents of 23 years in 1966 and 1970 which is quite unbelievable. Moreover though the house No. is same in 1966-1970 (Exts.- 2 and 3) the block No. is different.

8. As per the School certificate, i.e. Ext.-8 the OP's age was 24 yrs in 1994. From that point of view his year of birth should be 1970 and his age in 2015 is 47 years. As per Ext.-8, he was 21 years of age in 1991 itself, but his name is not there in the voter list whatsoever. The OP failed to mention anything in his evidence as to why his name is not recorded in the voter list of 1991 in spite of having his majority."

7. We have perused the order of the tribunal and also the reasons for its conclusions.

Upon going through the order of the tribunal, we do not find that except for the discrepancy of the age of Mubashir Ali which is shown in the voters' list of 1997 to be 60 years, the tribunal had not properly appreciated the other evidence which flows from the voters' lists of 1966, 1970, 1997 and 2005 which are consistent with each other. In view of the above, we are of the view that the

order dated 31.08.2016 passed by the learned Member, Foreigners' Tribunal, Nagaon Court No. 7th at Lanka, Nagaon in F.T./L/Case No. 62/2015 is not sustainable. Accordingly, the order dated 31.08.2016 is set aside and the matter is remanded back to the concerned tribunal for its opinion by taking into consideration the lineage established by the petitioner through the voters' lists of 1966, 1970, 1997 and 2005.

8. The petitioner shall accordingly appear before the concerned tribunal on 04.02.2019. Upon his appearance, the tribunal shall pass order keeping in view the observations made hereinabove within a period of 7 days from the date of appearance of the petitioner before the concerned tribunal.

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

10. Send back the LCRs.