
(2019) 02 GAU CK 0067
In the Gauhati High Court
Case No : Writ Petition (C) No. 2326 Of 2017

Jalal Uddin

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0067

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

Bench : Division Bench

Advocate : FU Baishya

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. HRA Choudhury, learned senior counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. J Payeng, learned counsel for the State of Assam appearing for the Foreigners Tribunal and Border Areas, Ms. A Verma, learned standing counsel appears for the authorities under the NRC as well as Ms. G Sarma, learned counsel appears for the authorities under the Union of India.

2. On being referred by the Superintendent of Police (Border),Golaghat, FTG Case No. 43 of 2015 was registered in the Foreigners' Tribunal, Jorhat.

3. In the written statement before the Tribunal, the petitioner took the stand that the name of his father is Md. Rafik Uddin, resident of village No.2, Ramnagar, Lachit Pathar, Police station -Lanka of the erstwhile Hojai Sub-Division of Nagaon district. A stand was also taken that Haji Konai Miya @ Haji Kanai Miya, son of Tuti was the great grandfather of the petitioner, who was also a resident of Lachit Pathar. For the purpose, the petitioner exhibited the voters list of 1966 of village-Lachit Pathar, Mouza-Kaki containing the name of Haji Konai Miya, son of Tuti, aged 100 years at serial No.154 and Haji Surja Bibi, wife of Konai, aged 90 years

appears at serial No.155.

4. The voters list of 1970 of village -Ramnagar No.2, Mouza-Kaki was also exhibited which shows the name of Jaifor Ali, son of Konai, aged 42 years at serial No.328 and Aiyaron Nessa, wife of Jaifor, aged 37 at serial No. 329. The voters list of 1985 of village-Ramnagar No.2 has also been annexed showing the name of Rofik Uddin, son of Jaifor, aged 40 at serial No. 450 and Joynab Bibi, wife of Rofik Uddin, aged 30 years at serial No.451. The voters list of 1997 shows the name of Md. Rofik Uddin, son of Jaifor Ali, aged 54 years and Musstt. Joynab Bibi, wife of Rofik Uddin, aged 42 years.

5. The voters list of 2014 of village Ramnagar No.2 which was also exhibited shows Rofik Uddin, son of Jaifor Ali, aged 61 years at serial No.812 and in order to establish the link with Rofik Uddin, who in turn is the son of Jaifor Ali, one Alauddin, son of Haji Jafor Ali, aged 24 years was examined who also happened to be the Gaonburah of No.2 Ramnagar village from the year 1998.

6. DW-2 stated that he knows the petitioner Jalaluddin and also his father and that the petitioner Jalaluddin is his nephew. The said witness also states the name of the other brothers of the father of the petitioner Rofik Uddin. Further, the birth certificate issued to the petitioner had also been exhibited as Exhibit.2.

7. Mr. J Payeng, the learned counsel raises an issue that the birth certificate is dated 29.09.2016 and therefore it is a document which is subsequent to the petitioner being referred.

8. We have taken note of that although the Exhibit-2, birth certificate was issued on 29.09.2016 but the same was issued against Registration No. 5946. From the certificate, it is not discernible as to when this registration was made by the Registrar of Birth and Death Certificate, Lanka, Nagaon. In the event, such registration was made subsequent to the reference, the objection raised by Mr. Payeng would have some credibility. But on the other hand, if such registration was made at a period more or less when the petitioner Md. Jalaluddin was born, the same would have to be looked from a totally different point of view. As the birth certificate itself may lead to some kind of conclusion as to whether the father of the petitioner is Md. Rofik Uddin of No. 2 Ramnagar village, we are of the view that the interest of justice will be better served if the Registrar of Birth and Death Certificate, Lanka is called as a witness and his deposition is taken as regards the contents of the record in the Office as to whether Rofikuddin of No.2 Ramnagar village is the father of the petitioner Jalaluddin. It is also stated that the mother and father of the petitioner, namely, Rofikuddin and Jaynab Bibi are still alive and they can also be relevant witnesses to depose as to whether petitioner Jalaluddin is the son of Rofikuddin of No.2 Ramnagar village. As in the absence of the evidence as indicated above, makes it indeterminable as to whether the petitioner is a foreigner or not, we accordingly set aside the order dated 21.03.2017 of the Foreigners' Tribunal, Jorhat in FTG Case No.43 of 2015 and remand the matter back for further evidence as indicated above.

9. The petitioner shall appear before the Tribunal on 25.03.2019. LCR be send back immediately.

10. It is stated that the petitioner is in detention camp at Jorhat. As the order of the Tribunal has been interfered with, we direct the release of the petitioner forthwith upon submission of two surety bonds to the satisfaction of the Superintendent of Police (Border), Jorhat.

11. Upon appearance of the petitioner on 25.03.2019, the Tribunal shall decide as to whether the petitioner is required to remain any further in the detention camp or not. Upon further evidence being led, the Tribunal shall give a final consideration within 45 days.

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