

(2023) 01 GAU CK 0035

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5048 Of 2018

Jamir Ali

APPELLANT

Vs

Union Of India And 6 Ors.

RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 01 GAU CK 0035

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

Bench : Division Bench

Advocate : H R A Choudhury

Final Decision : Allowed

Judgement

1. Heard Mr. F U Barbhuiya, learned counsel for the petitioner. Also heard Mr. G Sarma, learned counsel for the Home and Political Department of the Government of Assam, Mr. A Ali, learned counsel for the Election Commission of India, Ms. K Phukan, learned counsel for the Deputy Commissioner, Nagaon and Ms. L Devi, learned counsel for the authorities under the NRC and the Union of India.

2. The petitioner Md. Jamir Ali was referred to the Foreigners Tribunal 1st at Nagaon for a determination as to whether the petitioner is a person who had entered India subsequent to 24.03.1971, which resulted in registration of FT Case No. 252/2009. In the reference, the petitioner examined his mother Haliman Nessa who was about 80 years at the time of rendering the evidence.

3. Haliman Nessa in her deposition stated as extracted:

"On Oath

O.P. Jamer Ali is my son. At present he resides at Shilongoni. My parents- in-law died prior to my marriage with Abbas Ali Sarkar. My husband was permanent resident of village Goroimari P.S. Kaliabor Dist. Nagaon and he died in this village

much earlier when my son Jamir was in my womb. My husband had no land at Godaimari but his name and my own appeared in voter list at Godaimari. I have 3 sons namely Rustom Ali, Jamir Ali, Seher Ali and one daughter Fulbanu. After death of my husband I along with my 3 children shifted to my father's village Shillongoni and reside there. Jamir was born at Shillongoni but my other 3 children were born at Gadaimari. My 2 sons Jamir Ali and Sahar Ali are still resides at Shillongoni but my one son Rustom Ali resides at Sialmari with whom I am residing. My name appears as voter at Shillongoni and I had cast my vote at Shillongoni and at Gadaimari. I was born at Shillongoni.

My entire family including my children are all Indians.

No any Foreigners case against any of my family member except this case against my son Jamir is pending in any Court.

Cross Examination by A.G.P. Jamir Ali is aged about 40 years. He is carpenter. He also cast his vote at Shillongoni. He had purchased his own land at Shillongoni.

It is not a fact that I have deposited false to help my son."

4. The petitioner also exhibited the voters' list of 1965 in respect of Goroimari village wherein at Sl. No. 98 the name of Haliman Nessaz appeared showing her husband to be Abbas Ali. The petitioner also exhibited the voters' list of village Shillongoni of the year 1993 which shows his name at Sl. No. 87 by indicating his father to be Abbas Ali. The petitioner also exhibited 1993 voters' list of village Shillongoni which contains the name of Rustom Ali at Sl. No. 86 showing his father to be Abbas Ali. The voters' list of 1993 of village Shillongoni at Sl. No. 85 also contains the name of Halemam Nessa wife of Late Abbas Ali.

5. The petitioner assails the order/opinion dated 29.06.2018 of the Foreigners Tribunal 1st at Nagaon in FT Case No. 252/2009 by which he was declared to be a foreigner who had entered the State of Assam subsequent to 24.03.1971.

6. In the writ petition the petitioner takes a stand that his mother Halemam Nessa in her evidence had clearly stated that her husband was Abbas Ali Sarkar who was a resident of village Goroimari and that her husband died while the petitioner was still in her womb and in the circumstance the mother of the petitioner Halemam Nessa shifted to her parental home at village Shillongoni. She also stated that the petitioner Jamir Ali was born at village Shillongoni. The mother of the petitioner in her deposition further stated that she had shifted to village Shillongoni along with her three children namely Rustom Ali, Jamir Ali and Sahar Ali. The petitioner also brought in the deposition of Gaon Burah of village Shillongoni and the Gaon Burah in his deposition had stated that he knew the petitioner Jamir Ali who was born at village Shillongoni although the Gaon Burah may have denied the knowledge about the father of the petitioner.

7. Having taken note of the aforesaid materials on record, a link is established to the extent that the mother of the petitioner in her deposition stated that she had shifted to village Shillongoni after the death of her husband along with her three

children namely Rustom Ali, Jamir Ali and Sahar Ali. The voters' list of 1993 of village Shillongoni shows the name of the mother of the petitioner Halemam Nessa, showing her husband to be Abbas Ali as well as that of his elder brother Rustom Ali showing his father to be Abbas Ali and that of the petitioner again showing his father's name to be Abbas Ali.

8. The voters' list of 1965 of Goroimari village shows the name of Halemam Nessa showing her husband to be Abbas Ali and also that of Abbas Ali. The aforesaid materials clearly establish the link of the petitioner with that of Abbas Ali of Goroimari whose name appeared in the 1965 voters' list of the same village.

9. The evidence of the mother of the petitioner Halemam Nessa had not been controverted by the state authorities in cross examination before the Tribunal so as to dispute her claim that the petitioner is her son whose father died while he was still in the womb and that after the death of the father of the petitioner, the mother of the petitioner along with the petitioner had shifted to Shillongoni.

10. Upon perusal of the order/opinion of the learned Tribunal it is noticed that the aforesaid materials on record have not been taken note of while declaring that the petitioner is a foreigner who had entered the State of Assam subsequent to 24.03.1971.

11. In exercise of certiorari jurisdiction the Court under Article 226 of the Constitution of India is also required to look into as to whether all the relevant materials on record were taken note of by the Tribunal below while arriving at its decision. As we have arrived at the clear conclusion that the petitioner has established his link with Abbas Ali whose name appeared in the voters' list of 1965 of Goroimari village and the materials through which the link was established have not been taken note of by the learned Tribunal, we accordingly, set aside the order/opinion dated 29.06.2018 in FT Case No. 252/2009 of the Foreigners Tribunal 1st at Nagaon, Assam and declare that it cannot be held that the petitioner is a foreigner who had entered the State of Assam subsequent to 24.03.1971.

12. The consequence of the aforesaid declaration be made applicable to the petitioner as may be required under the law.

13. The LCR is returned back.

Writ petition stands allowed in the above terms.