
(2019) 08 GAU CK 0044
In the Gauhati High Court
Case No : Writ Petition (C) No. 4271 Of 2019

Kabir Khan

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 08 GAU CK 0044

Hon'ble Judges : Manojit Bhuyan, J;Kalyan Rai Surana, J

Bench : Division Bench

Advocate : U.C. Rabha, G. Hazarika, A. Borgohain, J. Payeng, A. Verma

Final Decision : Dismissed

Judgement

1. Heard Mr. U.C. Rabha, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned counsel for respondent No.1, Ms. A. Borgohain, learned counsel for respondent No.2, Mr. J. Payeng, learned counsel for respondent No.3, 5 and 6 and Ms. A. Verma, learned counsel for respondent No.4.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the opinion dated 11.03.2019 passed by the learned Member, Foreigners' Tribunal No. 7 of Barpeta in Case No. F.T.290/2016 corresponding to R/IM(D)T Case No. 8774/98 which was registered pursuant to reference made by the Superintendent of Police (B), Barpeta.

3. The learned counsel for the petitioner has referred to the written statement filed by the petitioner and he has submitted that Sukur Ali @ Sukur Khan @ Sukur Kha is his projected father and Jamala Khatun is his projected mother. It is projected that Kurpan Khan is the name of his projected grandfather and Majiran Nessa is the name of his projected grandmother. It is stated that the name of his grandfather, grandmother and father is enrolled in the voters' list of 1966 and 1970 in respect of 54 No. Chenga L.A.C. at village Khapanbariya Bhitha, P.S. & District Barpeta. It is further projected that the parental family of the petitioner

shifted from Village- Khapanbariya Bhitha to village Bandali Reserve and the petitioner was born and brought up at village Bandali Reserve, P.S. Tarabari, District Barpeta, Assam. In the evidence- on- affidavit of the petitioner (DW-1), it is mentioned that about 45 years ago their parental residence was shifted from Village- Khapanbariya Bhitha to Village- Bandali Reserve. Accordingly, it is projected that the name of the parents of the petitioner appeared in the voters' list of 1989 in respect of 47 No. Chenga LAC at village Bandali Reserve and the name of petitioner's mother was enrolled in the voters' list of 1997.

4. In support of his defence, the petitioner had examined himself as D.W.1, Jamala Khatun, his mother as DW-2 and one Ikram Hussain as DW-3, who was the Gaonbura of Village Bandali Reserve holding charge No.13. The following documents were exhibited, viz., Certified copy of voters list of 1966 (Ext-A), certified copy of voters list of 1970 (Ext-B), certified copy of voters list of 1989 (Ext-C), certified copy of voters list of 1997 (Ext-D), Gaonbura certificate (Ext-E), elector photo identity card of Jamala Khatun (Ext-F).

5. The learned counsel for the petitioner has submitted that the documents exhibited by the petitioner was sufficient evidence to link the petitioner with his parents and grandparents and as the petitioner has been able to prove that his grandparents and parents were bonafide citizens of the country and that the names of his grand-parents appeared as electors in the voters list of 1966 and 1970 and that the name of the petitioner's mother had appeared as elector in the voters list of 1989 and 1997. It is submitted that the learned Tribunal had failed to appreciate the materials available on record and therefore, the declaration of the petitioner to be a foreigner is not sustainable on facts and in law.

6. It is seen that as on 20.04.2017, when the petitioner was cross-examined, he has stated that his age was 38 years. Therefore, in the year 1997, the petitioner had attained the age of 18 years i.e. the voting age as per the Sixty-first amendment of the Constitution of India by which the voting age to Lok Sabha and to the Legislative Assembly was lowered from 21 to 18 years. As per his own statement, his mother is alive and she has deposed as DW-2, yet the petitioner has not proved any voters' list where his own name has been enrolled as an elector along with his projected parents. The voters list of 1997 (Ext-D) contains only the name of Jamala Khatun, his projected mother. As per the statement made by DW-2 in her evidence- on- affidavit, Sukur Ali @ Sukur Khan @ Sukur Kha, her husband who had died 2 (two) years ago, which means that the father of the petitioner was alive till the year 2015. It is seen that the petitioner has not offered any explanation as to why he could not produce and exhibit any voters list between the year 1997 and 2015, reflecting his name along with the name of his projected parents. Accordingly, except for a Gaonbura certificate issued by the DW-3, there is no exhibited document to prove that the petitioner is the son of his projected parents. In the opinion of this Court, the said Ext-E cannot be accepted as a proof that the petitioner is the son of Sukur Khan because the DW-3, in his cross-examination, had stated that he had issued the certificate as

per his personal knowledge. Thus, his certificate is not based on any public record maintained by the said Gaonbura. The said DW-3 had clearly admitted in his cross- examination that as per the Executive Instruction Part-VIII Chapter-VIII of the Assam Land and Revenue Regulation, 1886 he was not authorized to issue a certificate and that he had issued the certificate without being aware of the said Executive Instruction of Gaonbura. The said witness had also admitted that he had not produced any public register- book before the Tribunal and he had also admitted that he had issued the certificate only to show that the petitioner and his father were residing within his jurisdiction. Thus, as indicated above, the said Gaonbura certificate (Ext.E) has been rightly found to be rejected by the learned Tribunal, being not a proof of relationship between the petitioner and his projected parents.

7. Therefore, on a scrutiny of all the exhibited documents, it is clear that the petitioner has not proved from any document that he has any linkage with his projected grand-parents or with his projected father, namely, Sukur Ali @ Sukur Khan @ Sukur Kha. Moreover, apart from the statement made in his evidence-on- affidavit filed by the petitioner, there is no document to show that the projected father of the petitioner was known by three names. Therefore, on the basis of a mere self- serving declaration, it is not acceptable that the father of the petitioner was using three names, as it is quite possible that there are three distinct persons with some similarity in their names.

8. Therefore, in light of discussions above, this Court does not find that the impugned opinion rendered by the learned Tribunal is vitiated by any jurisdictional error or that there was any failure of giving opportunity of hearing to the petitioner. Therefore, as the Court is exercising supervisory jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned tribunal with the view of the Court. This is not a case where the learned Tribunal had refused to admit admissible evidence or that its finding is de hors the evidence on record.

9. Hence, this writ petition fails and the same is dismissed, leaving the parties to bear their own cost.

10. A copy of this order may be made a part of the records of the learned Tribunal for future reference.