
(2021) 10 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 874 Of 2019

Md. Bahar Ali

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 27-10-2021

Acts Referred:

Citation : (2021) 10 GAU CK 0042

Hon'ble Judges : N. Kotiswar Singh, J; Malasri Nandi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Mr. S.H. Rahman, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned CGC counsel appearing for respondent No.1; Mr. J. Payeng, learned special counsel, FT, appearing for respondent Nos.2 and 3; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent No.5; Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.4 and Ms. L. Devi, learned standing counsel, NRC, appearing for respondent No.6.

2. Considering the nature of the case, we are of the opinion that the present petition can be disposed of at the motion stage itself without issuing any formal notice to the respondents.

3. The plea taken by the petitioner in this petition, inter alia, is that though the petitioner exhibited a vital document as Exbt.-3, namely, the opinion of the Foreigners' Tribunal (IMDT) of Lakhimpur, North Lakhimpur, dated 04.02.2000 in IM(D)T/NL/227/90, wherein one Sahar Ali, (who the petitioner claims to be his father) was declared to be not a foreigner by the Tribunal, in the present proceeding before the Foreigners' Tribunal, Lakhimpur(1st), North Lakhimpur in Lakhimpur FT(1st) Case No.2677/2011, the same was not considered by the learned Tribunal.

4. Learned counsel for the petitioner submits that the aforesaid opinion of the earlier Foreigners' Tribunal rendered on 04.02.2000 would clinch the issue in

favour of the petitioner in as much as once his father was declared not a foreigner, as a natural consequence, the petitioner would be an Indian and not a foreigner. However, unfortunately, the learned Tribunal though referred to the said opinion of the Tribunal did not make any observation as regards the applicability/ reliability of the said opinion while determining the fate of the petitioner in the impugned opinion dated 29.11.2018. Accordingly, it has been submitted that because of the non-consideration of a vital piece of evidence, the opinion of the learned Tribunal has been vitiated and is liable to be set aside.

5. We have heard the learned counsel appearing for the parties and also perused the impugned opinion dated 29.11.2018. On perusal of the impugned opinion what we have noted is that the learned Tribunal referred to 4(four) documents which were exhibited as Exbts.-1, 2, 3 and 4 as mentioned in paragraph 8 of the impugned opinion. Exbt.-1 is the extract of Voters' List for the year 1965, Exbt.-2 is the extract of Voters' List of 1971, Exbt.-3 is the order of the copy of the IM(D)T case in IM(D)T/NL|227/90 and Exbt.-4 is the Voter Identity Card of the proceedee.

6. The learned Tribunal discussed about the Exbts.-1 and 2 by holding that the said Voters' Lists do not mention the name of Sahar Ali, whom the petitioner claims to be his father but mentions the name of Mahar Ali and accordingly, did not find it relevant.

7. However, as regards Exbt.-3, the learned Tribunal did not make any observation as to the relevancy or reliability or applicability of the said document. Similarly, as regards Exbt.-4, the learned Tribunal merely stated that this is only a document in proceedee's name by which the citizenship of a person cannot be determined at all.

8. From the above what is clearly evident is that while the learned Tribunal considered Exbts.-1, 2 and 4, the learned Tribunal did not consider the Exbt.-3 at all. In our view, the learned Tribunal ought to have considered the relevancy and applicability of the aforesaid document marked as Exbt.-3 by which according to the petitioner, the citizenship of his father was decided.

9. We take this view for the reason that on perusal of the aforesaid opinion dated 04.02.2000 in IM(D)T/NL|227/90 while deciding the said case, the learned Tribunal also referred to two voters' lists, namely, voters' list in respect of Nowboicha LAC of 1965 and 1971, which documents, the petitioner is also relying in the instant proceeding before the learned Tribunal in Lakhimpur FT(1st) Case No.2677/2011. Therefore, it cannot be said that the aforesaid opinion which was rendered based on same set of documents are not relevant. Accordingly, we are of the view that this is a vital piece of evidence which will be highly relevant for determining the status of the petitioner as to whether he is a citizen of India or not.

10. As regards Exbt.-4, we would like to observe that the Exbt.-4, in which the name of the proceedee has been clearly mentioned, though cannot be the sole

piece of evidence to determine his citizenship, it, in conjunction with other materials, can be relevant to determine the citizenship. To that extent, this is also relevant and could not be ignored.

11. Accordingly, we are of the view that the matter requires re-consideration by the learned Tribunal and the learned Tribunal will pass a fresh opinion by appreciating all the documents and exhibits by considering these holistically and not in isolation before arriving at the opinion as to whether the petitioner is a foreigner or not in terms of the reference made by the competent authority.

12. Accordingly, we allow this petition by setting aside the impugned opinion dated 29.11.2018 passed by the learned Foreigners' Tribunal, Lakhimpur (1st), North Lakhimpur in Lakhimpur FT(1st) Case No.2677/2011. The petitioner will accordingly, appear before the aforesaid Tribunal on or before 29.11.2021 and thereafter, the learned Tribunal will proceed with the matter and pass a fresh opinion in accordance with law.

13. However, since citizenship of the petitioner has come under cloud, he will remain on bail during the proceedings for which he will appear before the Superintendent of Police (B), Lakhimpur within 15(fifteen) days from today by furnishing a bail bond of ` 5,000/- with one local surety of the like amount to the satisfaction of the said authority. The concerned Superintendent of Police (B) shall also take necessary steps for capturing the fingerprints and biometrics of the iris of the petitioner. It is also made clear that the petitioner shall not leave the jurisdiction of the Lakhimpur district without obtaining permission from the Superintendent of Police (B), Lakhimpur.