

(2019) 03 GAU CK 0012
In the Gauhati High Court
Case No : Writ Petition (C) No. 201 Of 2017

Md. Reyaj Ali

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0012

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

Bench : Division Bench

Advocate : A Sarma

Final Decision : Allowed

Judgement

A.M. Bujor Barua, J

1. Heard Ms. T. Som, learned counsel for the petitioner. Also heard Mr. A.I. Ali, learned counsel for the Election Commission of India, Mr. A. Kalita, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas, as well as Ms. G. Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police (Border), Jorhat, Case No. JFT 327/2007 was registered in the Foreigners Tribunal, Jorhat.

In the written statement before the Tribunal, the petitioner took the stand that the name of the father of the petitioner appeared in the voter list of 1965 of LAC-90 No Kaliabor District-Nagaon.

3. A further stand has been taken that Annanya Aati Pichpora Moria (Musalman) Santha had issued a certificate through its President & Secretary stating that the petitioner is a permanent resident of Jayantipur P.O- Kuworitol P.S. Kaliabor Dist-Nagaon.

4. The petitioner further took the stand that the name of the petitioner appeared

in the voter list of 1993 of LAC-89 No Kaliabor, Dist-Nagaon, Police Station-Kaliabor Vill- Maria Gaon.

5. Before the Tribunal, the petitioner exhibited the voter list of 1965 of village-Maria Gaon, Mouza-East Kharia which contains the name of Ginasuddin son of Abdul age 30 years.

6. The petitioner further exhibited the voter list of 1993 of Village-Maria Gaon which contains the name of Raizat Uddin Son of Giasuddin age 30 years.

Further the voter lists of 1997, 2003, 2009 etc of Village-Maria Gaon were also exhibited.

7. The petitioner also annexes the certificate by an organization namely Annanya Aati Pichpora Moria (Musalman) Santha Nagaon, Jila Samiti which was established in the year 1974 to certify that the petitioner is a person who belongs to the Moria Muslim Community.

It is stated that Moria Muslim Community had been inhabitant of the State of Assam for last several centuries.

8. In the aforesaid background, the petitioner seeks to create a link with Ginasuddin whose name appears in the voter list of 1965, but the difficulty arose when the voters list of 1993 shows the petitioner to be the son of Giasuddin and consequently a question has arisen as to whether Ginasuddin of 1965 voter list of Vill-Maria Gaon and Giasuddin being the father Raizat Uddin of 1993 voters list of Vill-Maria Gaon are one and the same person.

9. To clarify the position, the petitioner produces the voters list of 1975 of Vill-Maria Gaon which shows the name of Giasuddin son of Abdul age 40 years. When we compare the voters list of 1975 with that of 1965 voters list, it is apparent that the name of Giasuddin was incorrectly spelt in the voters list of 1965 by stating it to be Ginasuddin.

Accordingly, we understand and accept that the voters list of 1965 contains the name of Giasuddin son of Abdul.

10. It being so, the petitioner being the son of Giasuddin as reflected from the voter list of 1993, may have established a link with Giasuddin of the 1966 voter list of Vill-Maria Gaon.

11. Further as the Moria Muslim Community has been inhabitant of the State of Assam since long, the certificate issued by the Annanya Aati Pichpora Moria (Musalman) Santha may also have some relevance.

But we have taken note that the person who had issued the certificate had not been examined.

12. As the aforesaid aspect of the matter that the possible linkage of the petitioner with Giasuddin of the voters list of 1965 was not examined by the Tribunal, we are of the view that the order dated 22.11.2016 of the Foreigners

Tribunal, Jorhat is unsustainable and the said is set aside.

13. Accordingly, the petitioner shall appear before the Tribunal on 01.04.2019 and if so advised, the petitioner may also examine the person certifying the certificate issued by the Annanya Aati Pichpora Moria (Musalman) Santha.

14. Upon considering the deposition if any and also considering the aspect that the petitioner may have established a link with Giasuddin of 1965 voters list, the Tribunal shall pass a reasoned order thereto within a period of 30 days thereafter.

15. It is stated that the petitioner is in detention at Jorhat. As we have interfered with the order dated 22.11.2016, the petitioner be released from detention forthwith subject to submission of two sureties from two permanent and prominent personalities from his village or from a Government official ensuring continuous presence of the petitioner as and when required by the authorities to the satisfaction of the Superintendent of Police (Border) Jorhat and the Superintendent shall also verify the authenticity and acceptability of the sureties.

Writ petition is allowed to the extent as indicated above.