
(2019) 03 GAU CK 0065
In the Gauhati High Court
Case No : Writ Petition (C) No. 1321 Of 2018

Noor Hussain

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0065

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

Bench : Division Bench

Advocate : G Uddin

Final Decision : Allowed

Judgement

1. Heard Mr. Gias Uddin, learned counsel for the petitioner, Mr. A.I. Ali, learned counsel for the Election Commission of India, Mr. J. Payeng, learned counsel for the State of Assam, appearing for the Foreigners' Tribunal and Border Affairs, Ms. A. Verma, learned standing counsel for the authorities under the NRC, Ms. G. Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police, Border, Hojai, FT (D) Case No. 223/2015 was registered against the petitioner before the Foreigners' Tribunal No. 10, Nagaon at Sankardev Nagar, Hojai, Assam.

3. Before the Tribunal, the petitioner took the stand that Fazlur Haque, son of Nazir Ahmed, age 22 years whose name appears in the voter list of 1966 of village Borjari Majgaon, P.S. Jamunamukh is the grandfather of the petitioner. A further stand was taken that Jamal Uddin, son of Faijul Haque, age 48 years, whose name appears in the voter list of 1997 of village Erakaplili (South) is the father of the petitioner. The voter list of 1997 also contains the name of Noor Hussain, son of Jamal Uddin, which the petitioner claims to be himself.

4. Accordingly, if Jamal Uddin, son of Faijul Haque , age 48 years of village Erakapili (South) of voter list of 1997 is the son of Fazlur Haque, son of Nazir

Ahmed of village Barjari Majgaon of 1966 voter list, a link is established. The question remains as to whether Fazlur Haque, son of Nazir Ahmed of 1966 voter list of village Barjari Majgaon and Fajlul Haque, father of Jamal Uddin of 1997 voter list of village Erakapili (South) are one and the same person.

5. Regarding this aspect, a statement was made by Mr. Gias Uddin, learned counsel for the petitioner when the matter was heard on 26.02.2019 that the villages Barjari Majgaon and village Erakapili (South) are adjacent villages and therefore, although the voter list may show them as different villages but for all purpose the voter list is of the same village. Accordingly, the petitioner was required to examine as to whether the villages Barjari Majgaon and Erakapili (South) are adjacent to each other.

6. Today when the matter is taken up, Mr. Gias Uddin, learned counsel for the petitioner relies upon a certificate dated 25.09.1917 of the Sarkari Gaonburah of villages Barjari Majgaon and Erakapili (South), which is exhibited as Exhibit 5. The fact that the said certificate is given by the Sarkari Gaonburah of villages Barjari Majgaon and Erakapili (South) gives an indication that both the villages may be same or that they are adjacent to each other.

7. If the two villages Barjari Majgaon and Erakapili (South) are same or they are adjacent to each other, there may be a possibility that in the voter list, the name of the villages are at times written in an interchangeable manner, meaning thereby that the voter list of a given year may indicate that it is village Barjari Majgaon and another list it may indicate as village Erakapili (South). But still it remains a question of factual determination and a conclusive view cannot be taken.

8. We have also taken note of that the Sarkari Gaonburah who had issued Ext. 5 certificate had not been examined. Accordingly, we are of the view that the ends of justice would be met that the petitioner is allowed to examine the Sarkari Gaonburah of villages Barjari Majgaon and Erakapili (South) for determining the aforesaid aspect as to whether the voter list of village Barjari Majgaon and Erakapili (South) technically reflects that it is the same voter list.

9. As the certificate of Gaonburah gives a prima facie indication that village Barjari Majgaon and Erakapili (South) may be same or adjacent villages and as that aspect of the matter which is already been on record was not taken into consideration by the Tribunal, we are of the view that the order dated 09.12.2017 in FT (D) Case No. 223/2015 of the Foreigners Tribunal No. 10, Nagaon at Sankardev Nagar, Hojai is unsustainable and accordingly the same is set aside.

10. Accordingly, the petitioner shall appear before the Tribunal on 24.04.2019 alongwith the Sarkari Gaonburah of villages Barjari Majgaon and Erakapili (South), who had issued Ext. 5 certificate for his deposition. After the deposition of the Gaonburah, the Tribunal shall pass a reasoned order within a period of 30 days thereof.

11. It is stated that the petitioner is presently in detention camp at Tezpur and as we have interfered with the order dated 09.12.2017, we direct that the petitioner be released forthwith subject to submission of two surety bonds from two prominent persons of his village who give the surety subject to the satisfaction of the Superintendent of Police (Border) Hojai who shall verify the authenticity and acceptability of the said two sureties for his satisfaction.

12. If the petitioner does not appear or does not cooperate with the Tribunal, the Tribunal shall be at liberty to pass any order as per law.

13. The writ petition is allowed to the extent indicated above.