
(2019) 03 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 7340 Of 2018

Nur Mahammad Bepari

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0018

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

Bench : Division Bench

Advocate : T H Hazarika

Final Decision : Allowed

Judgement

A.M. Bujor Barua, J

1. Heard Mr. A. Rashid learned counsel for the petitioner. Also heard Mr. A.I. Ali, learned counsel for the Election Commission of India, Mr. U.K. Nair, learned senior counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas and Ms. G. Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police (Border) Kamrup(R), A.F.T. (R) 1177/18 was registered before the Foreigners Tribunal No.3, Kamrup (Rural) Amingaon, Guwahati.

3. Before the Tribunal, the petitioner submitted his written statement and took the stand that he is the son of Sahar Uddin Bepari whose name appeared in the voters list of 1966 and 1970 of village Kazipara (Chandina) under Police Station- Chapar in the District Dhubri, Assam.

4. In order to substantiate the aforesaid stand, the petitioner exhibits the voters list of 1966 of village-Kazipara which contains the name of Ramjan Bepari son of Panama Sk age 52 years and Sahar Uddin son of Ramjan age 32 years. It also contains the name of Nuran Naha Bibi wife of Sahar Uddin age 30 years. The

voters list of 1970 also of village-Kazipara, Chandina contains the name of Ramjan Bepari son of Panama Sk age 56 years, Sahar Uddin son of Ramjan age 36 and Nuran Naha Bibi wife of Sahar Uddin age 34 years.

5. The petitioner further exhibits the voters list of 1997 containing the name of Nuran Nesa Bewa wife of Sahar Uddin age 50 years and Nur Mahammad Bepari son of Sahar age 28 years and claims that Nur Mahammad Bepari son of Sahar of the voters list of 1997 is the petitioner himself.

6. Further the voters list of 2005 and 2011 etc. were relied upon. We are of the view that the said voters list do not in any manner additionally makes it conducive to determine the issue as to whether Sahar Uddin son of Ramjan of the voters list of 1966 and 1970 of village Kazipara, Chandina is the father of the petitioner.

7. The voters list of 1966 and 1970 of village-Kazipara Chandina contains the names of Sahar Uddin son of Ramjan age 32 and 36 and Nuran Naha Bibi wife of Sahar Uddin age 30 and 34 respectively.

8. We have noted that the voters list of 1985 which is produced before the Court also contains the name of Sahar Uddin son of Ramjan age 52 years and Nuran Nesa wife of Sahar Uddin age 50 years.

The voters list of 1997 contains the name of Nuran Nesa Bewa wife of Sahar Uddin age 50 years and Nur Mahammad Bepari son of Sahar age 28 years.

9. As the voters list of 1966 contains the name of Nuran Naha Bibi wife of Sahar Uddin age 30 years and the voters list of 1970 also contains the name of Nuran Naha Bibi wife of Sahar Uddin age 34 years both being of village-Kazipara Chandina, it can be accepted that both the names pertains to the same person and accordingly, the petitioner may have established a link with Sahar Uddin son of Ramjan of the voters list of 1966 and 1970 of village-Kazipara Chandina.

10. Mr. U.K. Nair, learned senior counsel for the State authorities points out that Nuran Naha Bibi wife of Sahar Uddin who was of age 34 years in the year 1970 would have been approximately 61 year of age in 1997. But Nuran Nesa Bewa wife of Sahar Uddin of the 1997 voters list of Village-Kazipara, Chandina is shown to be aged about 50 years and therefore, a doubt arises as to whether Nuran Naha Bibi wife of Sahar Uddin age 34 years of 1970 voters list and Nuran Nesa Bewa wife of Sahar Uddin age 50 years of the voters list of 1997 both of village-Kazipara, Chandina are one and the same person.

11. We have perused the materials on record and is of the view that the available materials including the voters list of 1966, 1970, 1997 of village-Kazipara, Chandina are insufficient to arrive at a definite conclusion as to whether Nuran Naha Bibi wife of Sahar Uddin age 34 years of the voters list of 1970 and Nuran Nesa Bewa wife of Sahar Uddin age 50 years of the voters list of 1997 are one and the same person.

The aforesaid conclusion can only be arrived if the complete voters list of village-Kazipara Chandina of the years 1966, 1970 and 1997 as well as of the intermediate years of 1977 and 1985 are made available on record.

12. We are of the view that if it can be concluded Nuran Naha Bibi wife of Sahar Uddin age 34 years of the voters list of 1970 of village-Kazipara, Chandina and Nuran Nesa Bewa wife of Sahar Uddin age 50 years of the 1997 voters list are one and the same person, the petitioner may have established a link with Sahar Uddin son of Ramjan of the voters list of 1966 and 1970.

13. On the other hand, if the two persons are not one and the same, such link cannot be said to have been established. But at the same time, although some indication may appear from the voters list of 1966, 1970 and 1997 of village-Kazipara Chandina that Sahar Uddin son of Ramjan of the voters list of 1966 and 1970 of the said village may be the father of the petitioner, but as because we cannot arrive at a definite conclusion that Nuran Naha Bibi wife of Sahar Uddin age 34 years of the voters list of 1970 and Nuran Nesa Bewa wife of Sahar Uddin age 50 years of the voters list of 1997 of village-Kazipara Chandina, a definite conclusion as to whether Sahar Uddin son of Ramjan of the voters list of 1966 and 1970 is the father of the petitioner, cannot be arrived at. As a definite conclusion cannot be arrived at, it can neither be said that Sahar Uddin son of Ramjan of the voters list of 1966 and 1970 of Village- Kazipara Chandina is the father of the petitioner and nor it can be said that he is not the father of the petitioner. Accordingly, we set aside the order dated 24.08.2018 passed in A.F.T. (R) 1177/2018 of the Foreigners Tribunal No.3, Amingaon, Kamrup(R), Guwahati and the matter stands remanded back to the Tribunal for bringing on record the complete voters list of 1966, 1970 and 1997 of village-Kazipara, Chandina as well as the complete voters list of the year 1977 and 1985 of the same village and examine from the same as to whether Nuran Naha Bibi wife of Sahar Uddin age 34 years of the 1970 voters list and Nuran Nesa Bewa of the voters list of 1997 both of village-Kazipara are one and the same person.

14. Depending on the conclusion that may be arrived, the Tribunal shall pass its reasoned order as regards the issue raised as to whether Sahar Uddin son of Ramjan of the voter list of 1966 and 1970 is the father of the petitioner and accordingly answer the reference made to it.

15. It is stated that the petitioner is in detention at Goalpara and as we have interfered with the order dated 24.08.2018, the petitioner shall be released 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 (B) Kamrup (Rural) Chirang and the Superintendent shall also verify the authenticity and acceptability of the sureties.

16. The petitioner shall appear before the Tribunal on 04.04.2019 and the voters

list as indicated above shall be produced before the Tribunal at the instance of the parties.

17. The Tribunal shall give its adjudication within a period of 30 days thereafter.

Writ petition is allowed to the extent as indicated above. Return back the LCR.