
(2025) 09 GAU CK 0443
In the Gauhati High Court
Case No : WP(C) Of 919 Of 2025

Sabed Ali

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 03-09-2025

Acts Referred:

Evidence Act, 1872 — Section 165
Constitution Of India, 1950 — Article 226

Citation : (2025) 09 GAU CK 0443

Hon'ble Judges : Kalyan Rai Surana, J; Rajesh Mazumdar, J

Bench : Division Bench

Advocate : B U Laskar, A B Aconda

Final Decision : Dismissed

Judgement

Rajesh Mazumdar, J

1. Heard Mr. B.U Laskar, learned counsel for the petitioner. Also heard Mr. A. Verma, learned Standing Counsel for the FT matters and NRC; Mr. M. Kalita, learned counsel appearing on behalf of Ms. P. Barua, learned Standing Counsel for the Election Commission of India, Mr. M.R Adhikari, learned CGC and Mr. H.K. Hazarika, learned Junior Government Advocate, Assam for the State respondents.

2. This petition under Article 226 of the Constitution of India has been preferred by the petitioner to assail the opinion order dated 15/12/2020, passed by the learned Member, Foreigner's Tribunal No.7, Barpeta in F.T Case No. 250/2017, corresponding to IM(D)T Case No. 4920/98, by which the petitioner was declared as an illegal migrant.

3. The petitioner claims that he was born in India in the year 1973 at village Niz Paruwa, P.S-Tarabari (now Kachumara) in the district of Barpeta, Assam. He claims to be son of late Halem Miya @ Halem and Cahatun Nessa. He claims that his grandparents names were Jabbar Ali and Joygun Nessa, both now deceased. The petitioner claims to have four brothers and two sisters. The petitioner claims

that the name of the petitioner's parent name Halem Miya and Chahatun Nessa appeared in the voter list of 1970 at serial No. 31 and 32 at village Niz-Paruwa, Mouza-Baguribari under 54 No. Chenga LAC in the district of Barpeta (then Kamrup), Assam. He exhibited the certified copy of the voter list of that year. The petitioner claims that his father died in the year 1975 when the petitioner was about two years old. After the death of his father, the family shifted from village Niz-Paruwa to village Marichakandi under Mouza-Baguribari in the year 1977. The petitioner claims that his family did not settle permanently immediately but were roaming in search of livelihood. The petitioner claims that they started living permanently in the village Marichakandi in the year 1996 and thereafter, there was a partition in the family. The petitioner claims that although the petitioner's mother and two elder brothers filled up Enumeration Form for enrollment of their names in the voter list in the year 1989, their names were not enrolled. However, on subsequently submitting an enumeration Form separately, the name of the mother of the petitioner and the name of his elder brother appeared in the voter list of 1997. Though the name of the petitioner and his wife also appeared, they were marked as 'D' voter. The Trial Court records, received on requisition, reveals that the reference made by the Superintendent of Police (Border) Barpeta vide IM(D)T Case No. 4920/98 against the petitioner was registered in FT No. 2, Barpeta and thereafter, transferred to the newly created FT No. 7 at Barpeta where it came to be registered as FT Case No.250/2017. The reference by the Superintendent of Police (Border) Barpeta was based on the request of the Electoral Registration Officer of 47 Chenga Assembly Constituency along with verification report submitted by the Local Authority Officer.

4. On registration of the reference in the F.T No. 7 Barpeta, notice was issued to the petitioner on 03/07/2019 which was received by the petitioner himself. The petitioner appeared on 31/07/2019 by moving an application for adjournment and after subsequent adjournment, the Written Statement along with photo copies of the documents relied upon was submitted on 17/09/2019. The petitioner thereafter filed his evidence-in-chief on affidavit and the evidence-in-chief on affidavit of DW-2, whom the petitioner projected as his brother was filed later. On 03/03/2020, the petitioner and the DW-2 were examined under Section 165 of the Evidence Act by the Tribunal and were discharged. Arguments were heard on 07/12/2020 and the opinion impugned in this writ petition was rendered on 15/12/2020.

5. The learned Tribunal took into account the following documents which were exhibited on behalf of the petitioner in his evidence;

- "a) Ext-A is the electronic digitally signed certified copy of the voter list of 1966;
- b) Ext-B is the electronic digitally signed certified copy of the voter list of 1970;
- c) Ext-C & D are the electronic enumeration form;
- d) Ext-E is the electronic digitally signed certified copy of the voter list of 1997."

6. The learned Tribunal took into account the report of the Local Verification Officer and the reference by the Electoral Registration Officer which was initiated because the Local Verification Officer could not fill up the detail columns since the petitioner did not participate in the spot verification process even after being duly informed. The learned Tribunal discussed the contents and the impact of the contents of the Ext-A and Ext-B, which were certified copies of the voter list of 1966 and 1970. The learned Tribunal noted that although the petitioner claimed that his projected mother had expired in 1997, the petitioner did not produce any documents between 1970 to 1997 to establish that his projected mother had enrolled herself as a voter in any of the voters roll published in the interregnum. The learned Tribunal rejected the contents of Exhibit-C and Exhibit-D holding that entries in the Enumeration Forms are not public documents and are not issued by any public officer in discharge of official function. The learned Tribunal also took into account that in evidence filed on affidavit, the petitioner did not disclose the name of his grandmother. It was further noticed that during the examination by the Tribunal under section 165 of the Evidence Act, the petitioner deposed that he did not know the name of his father's sister. On questioning by the learned Tribunal, the petitioner could not name the village in which he was born. With regard to the evidence led by the DW-2, the Tribunal noticed that the DW-2 could not identify his aunt and he also could not state precisely how many children his uncle had. Even though he claims to be the brother of the petitioner, he could not name the sons and daughters of the person whom the petitioner had named to be his sister, who would also be his sister. He did not know the name of the wife of the petitioner. He however could name of the father-in-law of the petitioner. In the above circumstances, the Tribunal came to the finding that the documentary evidence produced by the petitioner suffered from multiple material omissions and contradictions and that the evidence of neither the petitioner nor the DW-2 were at all reliable. Their evidence did not inspire any confidence. On evaluation and appreciation of the linkage evidence, it was opined that petitioner had failed to establish link with purported voters recorded in the voters lists of the year 1966 and 1970 and had failed to lead evidence to establish the fact that he is an offspring of his projected parents Halem Mia and Cahatun Nessa. The Tribunal declared him foreigner who entered India on or before after 25/03/1971.

7. The learned counsel for the petitioner has argued that the reference made by the Local Verification Officer was false and did not conform to the requirement of law and therefore, he argued that the very initiation of the reference requires an interference by this Court at the threshold. The learned counsel for the petitioner further argued that the learned Tribunal had ignored the vital issues including place of birth of the petitioner and came to its conclusion merely basing on conjecture and surmises. The learned counsel for the petitioner further stated that interference of the Court would be necessary to remand back to the learned Tribunal to re-consider the entire issue and pass necessary order.

8. On the pointed query as to why the petitioner had filed the present writ petition on 12/02/2025 when the learned Tribunal had held rendered its opinion

on 15/12/2020, the counsel for the petitioner submitted that the petitioner had met with an accident on 08/08/2020 and that the delay was caused as the petitioner could not recover immediately. The learned counsel further submitted that the writ petitioner was taken into custody on 20/12/2024 and has been detained in detention camp since then. In the absence of any documents to support the said claim, we do not find the explanation satisfactory.

9. The learned counsel for the F.T matters has vehemently opposed the writ petition by arguing that the record would reveal that the petitioner had placed reliance only two documents i.e. the voter list of 1966 and the voter list of 1970, neither of which was sufficient to establish that Halem Mia and Cahatun Nessa were the parents of the petitioner as projected by him. Such projection has been, therefore, correctly rejected by the learned Tribunal. Referring to the enumeration Forms of 1989 and 1977, the learned counsel for F.T matters has emphasized that such documents have no evidentiary value and do not require any further consideration of the Court. The learned counsel has further submitted that the observation of the learned Tribunal on the evidence submitted by the DW-2 is well supported by the record of the Tribunal and in view of the several discrepancies, the Tribunal had correctly refused to rely upon the evidence of the DW-2. Therefore, he prayed that the instant writ petition may be dismissed and the opinion rendered by the learned Tribunal be upheld.

10. We have heard the learned counsel for the parties and we have also pursued the Trial Court record. We have already expressed that we are not satisfied with the explanation sought to be put forward for the inordinate delay in filing the present writ petition. Be that as it may, we propose to examine the arguments made by the learned counsel for the petitioner and the respondents for ensuring that the petitioner does not suffer on the ground of delay.

11. At the outset, we remind ourselves of the extent of interference that we can exercise under power conferred by Article 226 of the Constitution of India. It is settled law that while exercising such power, the writ Court would not reappreciate or re-evaluate the evidence before the Tribunal and in case two opinions or views on the same set of evidence are possible, the writ Court would not substitute the view taken by the Tribunal unless the same is grossly irrational or perverse. In exercise of power of writ jurisdiction, it is necessary to see as to whether due procedure of law had been followed and as to whether the petitioner had sufficient opportunity of placing his defence. In the present case, there is no argument made that due procedure had not been followed or that the petitioner did not have sufficient opportunity to place his defence before the Tribunal. The ground raised in the writ petition are that the Tribunal had not correctly appreciated the evidence before it and had resorted to surmises and conjunctures while rendering the opinion.

12. Although such grounds is not required to be looked into when there is no apparent and glaring error, in order to satisfy ourselves that the petitioner should not be deprived on his claim to citizenship without being heard on all grounds

that he projects, we have pursued the written statement filed by the petitioner and also the evidence led by both the witnesses along with documents which were exhibited and proved, as well as the photo copies of those documents which were not proved. The contradictions which were noticed by the Tribunal by cannot be said to be minor by any stretch of imagination. Neither of the two witnesses were conversant with the family of the other witness and in fact, they were completely ignorant of their immediate relatives, even as the two witnesses claimed to be brothers. We agree with the opinion of the Tribunal that the evidence of neither of the witnesses inspired any confidence and we appreciate the rejection of the projections made by the witnesses. We have considered the so-called enumeration Forms which are available at page-50 & 51 of the Trial Court record. We noticed that Sahatan Nessa in the purported enumeration Form in the year 1989 expressed her age

58 years while Abdul Samat projected himself to be 35 years and Jahura Khatun projected herself to be of 25 years of age. In the purported enumeration Form in the year 1997 Sahatan Nessa remained 58 years of age, while both Abdul Samat and Jahura Khatun only gained 5 years each in a span of 8 years. It is thus seen that in the Enumeration Forms could not be relied since they contain impossible recitation of self-declared age. There is no documentary evidence to prove that Halem Mia and Cahatun/Sahatun Nessa are linked to the petitioner as parents and son.

13. Having given our anxious consideration to the contentions raised in the writ petition and also having considered our limitations regarding re-evaluation of the records of the case and keeping in view of the extent of interference which this Court can exercise under Article 226 of the Constitution of India, we do not find any merit in this writ petition and therefore, this writ petition is dismissed. Accordingly, the consequences of such dismissal shall follow.

14. The original records received on requisition from the learned Tribunal be expeditiously returned back along with a copy of this order to be made a part of the record.