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**(2019) 03 GAU CK 0021**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 793 Of 2018**

|                                          |            |
|------------------------------------------|------------|
| Saibuddin Talukdar @ Sahabuddin Talukdar | APPELLANT  |
| Vs                                       |            |
| Union Of India And 4 Ors                 | RESPONDENT |

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**Date of Decision :** 07-03-2019

**Acts Referred:**

**Citation :** (2019) 03 GAU CK 0021

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

**Bench :** Division Bench

**Advocate :** M A Mondal

**Final Decision :** Allowed

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## Judgement

AM Bujor Barua, J

1. Heard Mr. M.A Mondal, learned counsel for the petitioner, Mr. A Ali, learned counsel for the Election Commission of India, Mr. J. Payeng, learned standing counsel for the State of Assam appearing for the Foreigners Tribunal and Border Affairs 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) of the erstwhile Dhubri district, IM(D)T Case No.6133/1998 was registered against the petitioner. Upon the IM(D)T Act of 1983 being declared ultra-vires and upon bifurcation of the erstwhile Dhubri district, the reference against the petitioner was transferred to the Foreigners Tribunal, Kokrajhar and was renumbered as K/FT/D/1715/2017. Before the Tribunal, the petitioner filed his written statement and took the stand that he is the son of Jobbar Ali Talukdar @ Jobbar Ali and Aduri Bibi @ Adorbhan Bewa of village Khutabagra Part-II under police station-Kazigaon, District-Kokrajhar and that the name of his father appears in the voters list of 1966 of village Khutabagra Part-II.

3. Before the Tribunal, the petitioner exhibited the voters list of 1966 of village

Khutabagra Part-II, which contains the name of Jubbar Ali Talukdar, son of Muslim age 32 and Aduri Bibi, wife of Jubbar age 30 at SI No.29 and 30 respectively, showing the House Number to be 26. The voters list of 1970 of village Khutabagra Part-II was also exhibited showing the name of Jubbar Ali Talukdar son of Muslim age 36. The vernacular version of the voters list of 1970 also contains the name of Aduri Bibi wife of Jubbar. But it is stated that it was not produced before the Tribunal. The petitioner also relies upon the voters list of 1997 of village Khutabagra Part-II, which contains the name of Saibuddin Talukdar son of Jubbar Ali age 28 at SI No.583, which also contains the name of Adorjan Bewa, wife of Jubbar age 75 years. The petitioner further relies upon the voters list of 2005 of village Khutabagra Part-II, which also contains the name of Saibuddin Talukdar son of Jubbar Ali age 38. The voters list of 1997 of village Khutabagra Part-II containing the name of the petitioner Saibuddin Talukdar son of Jubbar Ali age 28 may establish a link with Jubbar Ali son of Muslim age 32 of the voters list of 1966 of village Khutabagra Part-II as well as Jubbar Ali son of Muslim age 36 of the 1970 voters list of village Khutabagra Part-II.

4. We have noticed that the voters list of 1997 of village Khutabagra Part-II contains the name of Adorjan Bewa wife of Jubbar age 75 along with Saibuddin Talukdar. But as pointed out by Mr. J. Payeng, learned State Counsel, it is unclear whether Adorjan Bewa wife of Jubbar age 75 of the voters list of 1997 of village Khutabagra Part-II and Aduri Bibi wife of Jubbar age 30 of the voters list of 1966 of village Khutabagra Part-II are one and the same person. It is further pointed out that the petitioner had failed to produce any intermediate voters list between 1970 and 1997 of village Khutabagra Part-II, which may help in arriving at a conclusion as to whether Jubbar Ali Talukdar son of Muslim age 32 of 1966 voters list of village Khutabagra Part-II is the father of the petitioner.

5. We have considered the rival submissions. On one hand a definite conclusion cannot be arrived at from the voters list of 1997 of village Khutabagra Part-II that the petitioner is not the son of Jubbar Ali Talukdar son of Muslim age 32 of the voters list of 1966 of village Khutabagra Part-II. But at the same time, in the absence of the intermediate voters list and also considering the variance in the name of Aduri Bibi, wife of Jubbar age 30 in the voters list of 1966 of village Khutabagra Part-II and Adorjan Bewa wife of Jubbar age 75 in the voters list of 1997 of village Khutabagra Part-II, it again cannot conclusively be said that the father of the petitioner is Jubbar Ali Talukdar son of Muslim age 32 of the voters list of 1966 of village Khutabagra Part-II.

6. In view of the aforesaid situation, where it cannot be conclusively said that the father of the petitioner is Jubbar Ali Talukdar son of Muslim age 32 of the 1966 voters list of village Khutabagra Part-II nor at the same time it can conclusively be concluded that the said person is not the father of the petitioner, we deem it appropriate to remand the matter back to the Tribunal for a fresh consideration by allowing the petitioner to produce the complete voters list of village Khutabagra Part-II from the years 1966 up to 1997 so as to enable the Tribunal

to arrive at a definite conclusion. In doing so, the Tribunal by giving appropriate reason shall also arrive at its satisfaction as to whether Aduri Bibi wife of Jubbar age 30 of the voters list of 1966 of village Khutabagra Part-II and Adorjan Bewa wife of Jubbar age 75 of the 1997 voters list of village Khutabagra Part-II are one and the same person.

7. As the matter is remanded back, we set aside the order dated 22.11.2017 of the Foreigners Tribunal, Kokrajhar in K/FT/D/1715/2017. Further as the order dated 22.11.2017 is interfered with and secondly as we are unable to arrive at a definite conclusion that the petitioner is a foreigner, who entered India after 25.03.1971, we order that the petitioner, who is in detention at the detention camp at Goalpara be released from detention forthwith subject to furnishing of two separate surety bonds from two prominent persons of his village or a surety from an appropriate Government official to the satisfaction of the Superintendent of Police (Border), Kokrajhar, who shall verify and satisfy itself as regards the authenticity and acceptability of the sureties. Upon appearance of the petitioner before the Tribunal, the Tribunal shall decide as to whether any further detention of the petitioner is required or not.

8. Send back the LCR immediately.

Writ petition stands allowed to the extent indicated above.