
(2019) 03 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (C) No. 2894, 3710 Of 2018

Samsuddin

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 GAU CK 0004

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

Bench : Division Bench

Advocate : B C Das

Judgement

AM Bujor Barua, J

1. Heard Mr. BC Das, learned counsel for the petitioner and Mr. A Kalita, learned counsel appearing for the Foreigners' Tribunal and Border Affairs. Also heard Mr. AI Ali, learned counsel for the Election Commission of India 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), Nagaon, FT Case No. 1676 of 2017 was registered in the Foreigners' Tribunal No.10, Nagaon at Sankardev Nagar, Hojai against Md. Sirajuddin and FT Case No. 1675 of 2017 was registered against the petitioner Md. Samsuddin also in the Foreigners' Tribunal No.10, Nagaon at Sankardev Nagar, Hojai.

3. It is taken note of that Md. Samsuddin is the son of Md. Sirajuddin. Accordingly, we look into the materials on records as regards the claim of Md. Sirajuddin to be a citizen of India. In the resultant situation, we intend to give a final consideration to both the writ petitions being WP (C) No. 3710/2018 and WP (C) No.2894/2018.

4. In the common written statement before the Tribunal, the petitioner took the stand that the name of the father of Sirajuddin was recorded in the voters lists of

1966 and 1970 as Mazed Ali, son of Late Mantaj Ali. A stand was also taken that the petitioner Md. Sirajuddin studied at Binnakandi L.P School upto the year 1967. The voters list of 1966 of village-Charlock, PS- Jamunamukh, Mouza-Jamunamukh was exhibited which contains the name of Mazed Ali, son of Late Mantaj Ali, aged 40 years at serial No.122. The voters list of 1970 of village-Jogijan was also exhibited showing the name of Mazed Ali, son of Mantaz Ali, aged 50 years at serial No.347, House No. 64. Further, the voters list of 1993 of village-Charlock was exhibited containing the name of Sirajuddin, son of Abdul Mazed, aged 37. Further the voters list of 1997 of village Charlock containing the name of Sirajuddin, son of Abdul Mazed, aged 45 years was also exhibited along with the voters list of 2014 of village-Charlock containing the name of Sirajuddin, son of Abdul Mazed, aged 64 years.

5. The petitioner further exhibited a certificate dated 06.09.1979 of the Headmaster of Binnakandi LP School, which amongst others, showed that the petitioner studied in that school upto the year 1967. A certificate dated 19.01.2018 of the Sarkari Gaonburah was also exhibited. But the persons certifying the aforesaid two certificates were not examined and therefore we do not take into consideration the evidentiary value of the two certificates to show that the son of the petitioner Sirajuddin was Abdul Mazed of village Charlock.

6. The petitioner further brings in a deposition of one Moinul Hoque, son of Idris Ali, resident of village-Charlock, PS Jamunamukh, who is aged 70 years. In his deposition, Moinul Hoque had stated that his house and the house of the petitioner Sirajuddin are located near to each other and that Samsuddin is the elder son of Sirajuddin. Moinul Hoque further deposed that he and Sirajuddin studied together in the Binnakandi LP School in the same class and both of them completed their education in the said school in the year 1967. He also stated that while they were studying together, he came to know that the father of Sirajuddin was Mazed Ali and some people also called him Abdul Mazed. He further deposed that in the voters lists of 1966 and 1970, the name of the father of the petitioner Sirajuddin is stated to be Mazed Ali.

7. In the evidence of DW-3, Moinul Hoque, it is clearly deposed that he knew the petitioner Sirajuddin as they studied together in the Binnakandi LP School and further both of them were neighbours of each other and that the name of the father of the petitioner was sometimes indicated as Mazed Ali and at times as Abdul Mazed.

8. We have also gone through the voters list of 1966 of village Charlock and 1970 of village Jogijan, which contains the name of Mazed Ali, son of Mantaz Ali.

9. A question has arisen as to whether the village Jogijan is within the village Charlock which becomes relevant as the claim of the petitioner is that Mazed Ali whose name appears in the voters lists of 1966 and 1970 is his father and the voters list of 1970 pertains to village Jogijan. To that extent, an explanation is being given by the petitioner Sirajuddin that village-Charlock and village Jogijan

are in fact the same village and village Jogijan is the name of a portion which is within the village Charlock. At the same time we have also noted that from the concerned certificate issued by the Sarkari Gaonburah of village-Charlock and Jogigaj, which is otherwise inadmissible, a prima facie indication is available that village-Charlock and village Jogijan may be the same village.

10. We have perused the order dated 11.04.2018 of the Foreigners Tribunal No.10 at Nagaon , Sankardev Nagar, Hojai in FT Case No.1676 of 2017 and FT Case No.1675 of 2017. Upon perusal of the order, it has come to our notice that the aforesaid aspect of the evidence led by the petitioner through the voters list of 1966 and 1970 as well as the evidence of DW-3, Moinul Hoque were not taken into consideration while passing the order dated 11.04.2018. From the said point of view, the order dated 11.04.2018 is unsustainable and the same is accordingly set aside.

11. We have taken note of the provisions of the paragraph 113 of the decision of the Full Bench of this Court rendered in the State of Assam -vs- Moslem Mondal reported in 2013 (1) GLT 809 wherein, it is provided that in the event a relevant evidence is not taken into consideration by the Tribunal, the same on its own would be a reason for interfering with such order under the certiorari jurisdiction under Article 226 of the Constitution of India.

12. Upon the order dated 11.04.2018 being interfered, the matter now stands remanded back to the Tribunal for a fresh consideration by taking into account the evidence led by the petitioner Sirajuddin as indicated above.

13. As objected by Mr. A Kalita, learned counsel for the State of Assam for the Foreigners Tribunal and Border Affairs, the Tribunal while reconsidering the matter shall also give a reasoned order as to whether Mazed Ali, whose name appears at voters lists of 1966 and 1970 and Abdul Mazed being the father of Sirajuddin, whose name appears in the voters lists of voters list of 1993 of village-Charlock are one and the same person or not.

14. Accordingly, the petitioners shall appear before the Tribunal on 01.04.2019 and on such appearance, the Tribunal shall give its final consideration within a period of 30 days .

15. It is stated that the petitioners are in detention camp at Tezpur detention camp.

16. As we have interfered with the order dated 11.04.2018, we order that the petitioners, namely, 1. Md. Sirajuddin, son of Mazed Ali @ Abdul Mazed and 2. Md. Samsuddin, son of Sirajuddin be released forthwith subject to a submission of two surety bonds from two prominent persons who give the surety subject to the satisfaction of the Superintendent of Police (Border) Hojai who shall verify and satisfy himself as to the authenticity and acceptability of the two sureties to his satisfaction.

17. Upon appearance before the Tribunal, it shall be open for the Tribunal to pass

further order as to whether the petitioners have to be kept in detention or not.

18. Writ petition stands allowed to the extent as indicated above.