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**(2019) 02 GAU CK 0098**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 5200 Of 2017**

Sangser Ali @ Sangser Bhuyan

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

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**Date of Decision :** 28-02-2019

**Acts Referred:**

**Citation :** (2019) 02 GAU CK 0098

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

**Bench :** Division Bench

**Advocate :** M U Mondal

**Final Decision :** Allowed

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## Judgement

A.M. Bujor Barua, J

1. Heard Mr. M.U. Mondal, 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, Ms. A. Verma, learned standing counsel for the authorities under the NRC 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) Barpeta, IM(D)T Case No.2433/A/98 was registered against the petitioner. Subsequently on the IM(D)T Act, 1983 being declared ultra vires, the reference was transferred to the Foreigners Tribunal 9th Barpeta and was re-numbered as F.T. 9th Case No.127/2016. Before the Tribunal, the petitioner filed written statement and took the stand that the father of the petitioner namely Abdul Barek along with other family members appeared in the voter list of 1966 of village-Dhupguri Mouza-Howly PS-Barpeta at Serial No.99.

3. A stand was also taken that the same list contains the name of his mother Jaygan Nessa at Serial No.100. A further stand was taken that the name of the

other family members of the petitioner appeared in the voter list of 1970 of village Dhupguri and there were some landed property in the name of the father of the petitioner at village-Dhupguri. A stand was also taken that in the voter list of 1985 the name of the petitioner is written as Sanser Bhuyan in place of Songsher Ali.

4. Before the Tribunal, the petitioner exhibits the voter list of 1966 of village Dhupguri Mouza-Howly which contains the name of A, Barek at serial No-99 and that of Joigan Nessa at Serial No.100 and both of them are shown to be living in the same house No.26. The voter list of 1970 that was exhibited also of village-Dhupguri contains the name of A. Barek son of Doju and Joigan Nessa.

5. Further the voter list of 1985 of village-Dhupguri was also exhibited which amongst others contains the name of Jaygan Nessa wife of Barek aged 29 years and Sanser Bhuyan son of Barek age 31 years.

6. It is stated that the depiction of age of Jaygan Nessa and Sanser Bhuyan were incorrectly made in the voter list of 1985 and to that extent, we are of the view that the contention of an incorrect age depiction may be correct inasmuch as, in the voter list of 1970, Joigan Nessa is shown to be 38 years and in the voter list of 1966 her age is shown to be 34 years, therefore, definitely in 1985 voter list, she cannot be 29 years.

7. We have taken note of the Exhibit-D revenue paying receipt of village-Dupguri which shows that the revenue was received from Abdul Barek Bhuyan which may also give an indication that the complete name of Abdul Barek was Abdul Barek Bhuyan. The petitioner further relies upon the voter list of 1997 of village Dhupguri Mouza-Howly which contains the name of Joigan Nessa wife of Barek and that of Sangsher Bhuyan son of Barek age 40 years.

8. The Gaonburah of village-Dhupguri was also examined as DW-2 and in his deposition he had stated that he had issued the certificate to one Samsher Bhuyan son of Abdul Barek and that Samsher Bhuyan resided in the village-Dhupguri and thereafter shifted to village-Bhaluki. As the petitioner seeks to establish his linkage through the voter lists of 1966, 1970 and 1985 of village-Dhupguri , we are not concerned with any possible shifting of the petitioner from village-Dhupguri to Village-Bhaluki as deposed by DW-2.

9. From the voter list of 1966 containing the name of A. Barek son of Doju age 62 yers and Joigan Nessa wife of A. Barek age 34 years and residing in the same House No.26 and the voter list of 1997 again of village Dhupguri containing the name of Joigan Nessa wife of Barek age 70 years and Sangsher Bhuyan son of Barek age 40 years, where both of them are residing in the same House No.309, through the in between voter list of 1970, 1985 also of village Dhupguri, we are of the view that the petitioner is able to establish a link between Sangsher Bhuyan son of Barek of 1997 voter list and that of A. Barek son of Doju whose name appears in the 1966 voter list.

10. The only aspect that remains as to whether Sangser Ali who is the petitioner before the Court and Sangsher Bhuyan son of Barek whose name appears in the voter list of 1997 of village Dhupguri are one and the same person. But at the same time, we also take note of that Joigan Nessa who is projected to be the mother of the petitioner, her name appears along with the petitioner in the voter list of 1997, where both of them reside in the same House No.309 and also appears along with A. Barek of 1966 voter list, it cannot be said that Sangsher Bhuyan of the voter list of 1997 and A. Barek of the voter list of 1966 are not linked with each other.

11. As we are of the prima facie view that by referring to A. Barek son of Doju aged 62 years of the 1966 voter list along with Joigan Nessa wife of A. Barek aged 34 years who live in the same household and the voter list of 1997 also of village Dhupguri which shows Joigan Nessa wife of A. Barek aged 70 years and Sangsher Bhuyan son of Barek aged 40 years, who are also living in the same household, a link is established between Sangsher Bhuyan son of Barek and A. Barek son of Doju of 1966 voter list both of village-Dhupguri.

12. From the order of the Tribunal dated 13.07.2017, we notice that the aforesaid aspect of the matter was not given a consideration. Accordingly we are of the view that the order dated 13.07.2017 of the Foreigners Tribunal 9th, Barpeta in F.T. 9th Case No.127/2016 is unsustainable and the same is set aside.

13. Accordingly, the matter is remanded back to the Tribunal for a fresh consideration by taking the aforesaid aspect into consideration.

14. However, as the state respondents had raised an objection that the absence of the name of A. Barek son of Doju in the subsequent voter list of up to 1997 raises a question that he may not have continuously being residing in the State of Assam or that Joigan Nessa whose name appears with A. Barek of the 1966 voter list and Joigan Nessa whose name appears with Sangsher Bhuyan of the 1997 voter list may not be the same person, the State may raise that question before the Tribunal and for the purpose may also lead any evidence that they may desire to do so. On the other hand, the petitioner shall also lead the necessary evidence that A. Barek of the 1966 voter list had continuously resided in the State of Assam and also, if possible, to produce the in between voter list of 1966 and 1997.

15. Upon doing the needful as indicated above, the Tribunal shall give its final opinion within a period of 35 days there from. As regard the other factor whether Sangsher Bhuyan of the 1997 voter list and Sangsher Ali the petitioner are one and the same person, the Tribunal shall also look into the aspect to give its opinion and for the purpose determining whether both of them are same person, the parties may lead evidence that they may desire.

16. As the order of the Tribunal dated 13.07.2017 is interfered, the petitioner who is in detention at district jail Goalpara be released forthwith subject to submission of a surety bond from two permanent and prominent personalities

from her 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 (Border) Barpeta.

17. Accordingly, the petitioner shall appear before the Tribunal on 29.03.2019 and on her appearance the Tribunal shall further consider as to whether the petitioner is required to remain in detention or not.

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

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