
(2019) 02 GAU CK 0069
In the Gauhati High Court
Case No : Writ Petition (C) No. 4316 Of 2017

Taijul Islam

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 21-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0069

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

Bench : Division Bench

Advocate : S Alam

Final Decision : Allowed

Judgement

A.M. Bujor Barua, J

1. Heard Mr. P.K. Deka learned counsel for the petitioner. Also heard Mr. A.I. Ali, learned counsel for the Election Commission of India, Mr. J. Payeng, learned 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, Nagaon, F.T./L/Case No.164/2015 was registered in the Foreigners Tribunal, Nagaon Court No.7th, at Lanka.

3. In the written statement before the Tribunal, the petitioner took the stand that he was born and brought up at village Chetowai Khaiti under Lahori Police Station of Nagaon district. It is stated that the name of the father of the petitioner appeared in the voter list of 1966 of village Chetowai Khaiti at Serial No.70, House no.19 and the voter list of 1970 of the same village at Serial No. 78 House No. 19.

4. Further stand has been taken that the name of the father of the petitioner also

appeared in the voter list of 1975, 1985, 1989, 2005 as well as 2014. Before the Tribunal, the petitioner exhibited the voter list of 1966 which shows the name of Ajgar Ali son of Arman aged 29 years House No.19. The voter list of 1970 shows the name of Ajgar Ali son of Arman at serial No.78 House No.19.

5. Another voter list of 1970 of village Setuwai Khaiti was also exhibited which shows the name of Ajgar Ali son of Arman aged 33 years at serial No.78 and Hajrot Ali son of Arman, aged 27 years at Serial No.30.

6. The subsequent voter list of 1975, 1985, 1989, 1997, 2005, 2011 and 2014 were also exhibited. The voter list of 1989 shows the name of Ajgar Ali, son of Arman and Hormuj son of Ajgar. While the voter list of 1985 shows the name of Ajgar son of Arman and Aysha wife of Ajgar. The voter list of 1997 shows the name of Ajgar Ali son of Arman Ali aged 60, Hormuj Ali, son of Ajgar Ali, aged 31 and Asha Khatun wife of Ajgar Ali aged 37 and all of them are residing the same house.

7. The voter list of 2011 shows the name of Ajgar Ali son of Arman Ali aged 74 years and Amena Khatun wife of Ajgar Ali aged 32 and all of them are shown to be residing at House -100. The voter list of 2014 shows the name of Ajgar Ali aged 75 years at serial No.616 and Ayesha Khatun wife of Ajgar Ali aged 54 at serial No.617, Anena Khatun wife of Ajgar Ali aged 33 at serial No.619 Taijuddin son of Ajgar Ali aged 32 years at serial No. 620 and Taijul Islam son of Ajgar Ali aged 27 years at serial No. 621.

8. When we examine the aforementioned voter lists, it is discernible that the name of Ajgar Ali appeared in the voter list of 1966 and 1970 whereas, the voter list of 1985 shows the name of Ajgar son of Arman and his wife Aysha. While the voter list of 1997 shows the name of Ajgar Ali son of Arman Ali, Hormuj Ali son of Ajgar Ali and Asha Khatun wife of Ajgar Ali, the voter list of 2011 shows the name of Ajgar Ali, son of Arman Ali and Amena Khatun wife of Ajgar Ali.

The voter list of 2014 contains the name of all persons as indicated above and all of them are shown to be residing in the same House No.100.

9. From the above materials, a direct link can be established with the voter lists of 1966 and 1970 containing the name of Ajgar Ali through the voter list of 1985, 1989, 1997, 2004, 2014 leading to the voter list of 2014, which shows the name of the petitioner to be the son of Ajgar Ali and also to be residing in the same house as that of Ajgar Ali being at House No.100.

We have perused the order of the Tribunal dated 18.10.2016.

10. We have taken note that the aforesaid aspect of the matter was not taken into consideration.

Against the order dated 18.10.2016 passed in F.T./L/Case No.164/2015, a Misc.Case No.30/2017 was preferred for review. By the order dated 31.05.2017, the Misc. Case for review was also dismissed. Accordingly, as the order of

18.10.2016 is interfered, the order of review dated 31.05.2017 is also set aside and the matter is remanded back to the Tribunal.

11. Mr. J. Payeng, learned state counsel on the other hand points out that the name of the petitioner appears only in the voter list of 2013 and 2014 whereas the reference is of the year 2010 and therefore, the name could not have been included in the voter lists which are subsequent to the reference. While taking into consideration, the voter lists of 1966, 1970, 1975, 1985, 1989, 1997, 2011, 2013 and 2014, the Tribunal shall also keep in mind the aforesaid objection raised by Mr. J. Payeng and consider the same and pass its reasoned order.

12. To arrive at a conclusion on the aforesaid aspect, the Tribunal may examine or cross-examine any of the witnesses they would like to examine. As the order of the Tribunal has been set aside, the petitioner who is in detention camp 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 (Border) Morigaon.

13. The petitioner shall appear before the Tribunal on 18.03.2019 and on his appearance the Tribunal shall further decide whether the petitioner is required to be retained in detention or not and pass its reasoned order. The reference be decided within a period of 45 days from the date of appearance of the petitioner.

Writ petition is allowed to the extent as indicated above.