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| 10-09-2021 | 10-09-2021 | 10-09-2021 | 13-09-2021 | 14-09-2021 |

Petition No. 342

Petitioner:- Smti Manjari Das, Advocate

IN THE FOREIGNERS TRIBUNAL –II, KARIMGANJ

Dist.- KARIMGANJ :: ASSAM - 788710

F.T. Case No. 129/2017 Police Enquiry No. D/3654/98



State

Versus

Bikram Singha, S/o – Bharat Chandra Singha,

Vill. – Jamirala, P.S. – Patherkandi,

Dist. – Karimganj, Assam. Opposite Party

Before Mr. Sishir Dey, Member (Attached),

Foreigners Tribunal- II, Karimganj

Advocate for the State : Shri Sankar Chakraborty, A.G.P.

Advocate for the O. P. : Smti Manjari Das

Date(s) of hearing : 01-09-2021

Date(s) of argument : 09-09-2021

Final Order cum Opinion

Date: 10-09-2021

1. This is a reference case relating to D voter, i.e. Doubtful Elector. The Electoral Registration Officer of LA-2, Patherkandi Constituency had suspected the citizenship status of the O.P. whose name was enrolled in the voter list for the year 1997 of LAC-2, Patherkandi vide Part No. 42(ka), House No. 104, Serial No. 394. The allegation is that the O.P. had produced no documents to the Local Verification Officer as per his Annexure-A report. The ERO forwarded the case in Annexure-B format along with Annexure-A to the Superintendent of Police (Border), Karimganj. The S.P.(B), Karimganj in turn, referred the case before the then IM(D)T, Karimganj which was registered as IM(D)T Case No. D-506/1999. After the IM(D)T Act was struck down by the Supreme Court of India in 2005, the case has come before the Foreigners Tribunal-I, Karimganj for opinion whether the O.P. / Proceedee is a foreigner or not. The case was registered in F.T.-I, Karimganj as F.T. Case No. 584/2007. The case was filed on 28-05-2008 due to failure of causing service, the O.P. being untraced. The case record has been transferred from F.T.-I, Karimganj to the F.T.-II, Karimganj on 09-08-2017 and has been renumbered as F.T. Case No. 129/2017 in this tribunal.

Sishir Dey
Member (Attached)
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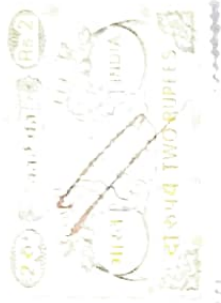
2. Several attempts were made to serve the notice upon the O.P. but the O.P. was not found in the village (as he was residing in New Delhi). The uncle of the O.P. Kuber Singha, S/o- Madan Kumar Singha of Jamirala village finally received the notice stating that the O.P. resides in New Delhi and had given full postal address and mobile numbers of the O.P. Vide order dated 06-03-2020, issuing of further notice to the O.P. through registered post was directed by this Tribunal. Registered Letter to O.P. at his address in New Delhi sent on 12-03-2020 had however been unfortunately returned back undelivered.

3. At this stage, Notice and copy of order dated 28.06.2021 was directed to be sent in the whatsapp number(s) of the O.P. Bikram Singha which was accordingly sent by the process server and was received. The O.P. did not appear. The tribunal then proceeded to examine the uncle of the O.P. Kuber Singha on the issue of service of notice and issued summons to him to appear as tribunal witness before this tribunal. Summons was duly served. On the given date another uncle of the O.P. Sasindra Singha as per telephonic instruction of the O.P. appeared along with Advocate and sought time on behalf of the O.P. for his appearance stating that the O.P. is in Bangaluru for his private job. Sasindra Singha further stated that his elder brother Kuber Singha though received summons but could not come due to illness. He was then examined on oath as Tribunal Witness No. 1. Time was given to facilitate appearance of the O.P. The O.P. Bikram Singha @ Vikram Singha accordingly appeared before the tribunal and submitted his representation (written statement) in response to the show-cause notice along with copies of documents denying the allegation of being doubtful citizen and claimed to be a citizen of India by birth. The O.P. adduced evidences in support of his claim.

4. The O.P. Vikram Sinha submitted written examination in chief of himself as OPW-1 and his father Bharat Chandra Singha as another witness as OPW-2 who were cross examined by the Ld. A.G.P. The O.P. side has marked as many as 12 documents as exhibits. State adduced no evidence.

5. Heard arguments from the Ld. Advocate for the Opposite Party. Also heard learned Assistant Govt. Pleader for the State.

6. The O.P. stated that he is a citizen of India by birth. The O.P. Vikram Singha stated that he was born on 06-01-1978 at Jamirala village under Patherkandi P.S. and studied in New Delhi. His father's name is Bharat Chandra Singha and grandfather's name is Late Madan Kumar Singha who were permanent residents of Jamirala village. His father was serving in Indian Air Force from 08-01-1972 till 01-02-2001. The O.P. stated that his father's name is enlisted in the Voters List of 1970. His grandfather's name is there in land document of 1968. His name was appeared in the Voter List of 1997 at Jamirala village within LAC-2 Patherkandi. The O.P. further stated that names of himself and all members of his father's family have appeared in



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Final NRC Assam; his father settled in New Delhi. He has EPIC in his name in NCT of Delhi. The O.P. has Aadhaar card in his name and his name is enrolled in NPR too.

7. **The O.P. side submitted the following documents:**

Exhibit-1 : Certified copy of the relevant extract of Electoral Roll for the year 1970 of LAC-5 Patherkandi, Vill.- Jamirala vide Part No. 127, Serial No. 160, House No. 43 showing name of Bharat Chandra Singha, S/o- Madan Kumar Singha, age about 21 years.

Exhibit-2 : Land document vide Revenue Kacha Patta number 148 of Mouja- Jamirala, Porgona- Pratapgarh, dated 05-06-1968 wherein the name of Madan Kumar Singha is depicted at serial no. 3. (Xerox copy proved in original)

Exhibit-3 : Discharge Certificate Book in the name of Ex-airman Warrant Officer Bharat Chandra Singha vide Service No. 293910 S, having joint photograph with his wife affixed and stamped containing many relevant details and particulars such as Date of Birth – 20-09-1952, Father's Name – Late Madan Kumar Singha, Wife – Mrs. Nayantara Sinha, Permanent Address: Vill.- Jamirala, P.O.- Tinokhal, Telegraph Office- Patharkandi, Nearest Rly. Stn.- Kalkali Ghat, Dist.- Karimganj, Assam, Date of Enrollment in IAF – 02-01-1972, Date of Attestation (oath of allegiance taken on) – 19-10-1973, Total Service – 29 years 24 days, Family particulars include – 2. Vikram Singha, Son, DoB- 06-01-1978, 3. Amlen Singha, Son, DoB- 28-01-1985 and 4. Brisha Konya Devi, Mother, DoB- 08-01-1932. (Xerox copy proved in original)

Exhibit-4 : Pension Payment Order in the name of Bharat Chandra Singha vide PPO No. 08/14/5/06578/2001, dated 26-09-2001. (Xerox copy proved in original)

Exhibit-5 : Certified copy of the relevant extract of Electoral Roll for the year 1997 of LAC-2 Patherkandi, Vill.- Jamirala vide Part No. 42(ko), Serial No. 394, House No. 104 showing name of Bikram Singha, S/o- Bharat Chandra Singha, age about 19 Years with his uncle Sachindra Singha and his aunt Sakhi Sinha.

Exhibit-6 : Downloaded copy of Final NRC Assam showing the inclusion of names of the O.P. and his father and other family members vide ARN: 101831702104185502386. (Compared online from the official website of the NRC Assam, www.nrcassam.nic.in)

Exhibit-6(1) : Acknowledgement / Resident's Copy of National Population Register (NPR) in the name of Vikram Singha, vide EA Code: 2022, TIN: 330707001700101230077083003, wherein date of birth, UID, address at Vikas Puri, Delhi are depicted.

Exhibit-7 : EPIC in the name of Vikram, S/o- Bharat Chandra vide no. LQK1843614 issued on 06-09-2005 at Vikaspuri. (Xerox copy proved in original)

Exhibit-7(1) : Voter Information slip in the name of Vikram Singha, S/o- Bharat Chandra Singha, vide EPIC No. LQK1843614 printed on 12-03-2019. (Downloaded copy verified online and found correct with minor changes on time)



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Exhibit-8 : Aadhar Card in the name of Vikram Singha, S/o- Bharat Chandra Singha, vide UID: 479146335332. (Xerox copy proved in original)

Exhibit-9 : Admit Card of HSSLC Examination 1970 under SEBA, Assam in the name of Bharat Chandra Singha, S/o- Madan Kumar Singha vide Roll M No. 61 wherein age on 01-03-1970 is written as 17 years 5 months 18 days. (Xerox copy proved in original).

Exhibit-10 : Secondary School Examination 1993 of CBSE pass certificate of the O.P. Vikram Singha vide Roll No. 6107633 passed from the Air Force School, Subroto Park, New Delhi. (Xerox copy proved in original)

8. All the Exhibits are duly proved on either being originals produced or being certified copies of public documents or compared and verified online from official websites.

9. The learned Advocate for the O.P. submitted that appreciating the depositions of OPW-1 and OPW-2 and also Tribunal Witness No.-1 and appreciating the 12 numbers of Exhibited documents it's sufficiently proved that the O.P. and his father or any other family members are not foreigners. They are permanent residents of the village Jamirala under Patherkandi P.S. and are citizens of India. The father of the O.P. studied from primary level upto class – 11 (in 1969) at Jamirala and Patharkandi and served 29 years in IAF. So his citizenship cannot be doubted. She further argued that the O.P. is a citizen of India by birth as per provisions of Section 3 of the Citizenship Act and also through his parents.

10. The Ld. AGP has objected to inclusion of name of O.P. Vikram Singha in Final NRC in Assam, being illegal due to pendency of this case. He stated, a proceedee in a pending case before Foreigner's Tribunal was not eligible for inclusion in FNRC as per approved SOP of NRC Assam. He further expressed doubt about finality of Assam NRC published online on 31st August 2019. He submitted that Exhibit – 6 may not be considered as a legally valid document. The Ld. AGP submits that since the O.P. has not submitted any document issued prior to 01-01-1966, so there remains a shadow of doubt that the O.P. is a foreigner of the stream between 01.01.1966 and 24-03-1971, migrated from Specified Territory. He further said that Section 6A of the act is for Assam and Section 3 has no applicability in Assam. Moreover, he argues that Section 3 of the Citizenship Act is pending consideration before Constitution Bench of the Supreme Court.

11. In response, the Ld. Advocate for the O.P. stated that Final NRC in Assam has been published as per direction and monitoring of the Hon'ble Supreme Court, so there should not be any doubt about finality or legality of NRC for Assam. In respect of the inclusion of name of O.P. in NRC, she stated that being found eligible based on documents his name was included. The Advocate of the O.P. urged to appreciate depositions of witnesses in addition to exhibited documents. She has drawn attention towards "White Paper on Foreigners' Issue" published by Home & Political



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Department, Government of Assam dated October 20, 2012 in which Chapter 2, titled as Illegal Immigration, para no. 2.1.3 in page 14 states, "Thus, those who crossed the international border without proper legal documents to come to Assam on or after March 25, 1971, are the illegal migrants provided all those who came before this deadline became citizens through the legal process akin to naturalization. It should be kept in mind, however, that the children born to these illegal immigrants may or may not be lawful citizens of India by birth. In this regard, the following provisions stated in Section 3 of the Citizenship Act of 1955 would apply: (i) A person born in India on or after 26th January, 1950, but before 1st July, 1987, is a citizen of India by birth irrespective of the nationality of his/her parents. (ii)"

12. The only issue before the Tribunal is whether the O.P. Bikram Singha @ Vikram Singha is a citizen of India or not. Considering the Exhibits- 3, 5, 6, 6(1), 7, 7(1) and 10 together with depositions of OPW-1 and 2, and in view of depositions of Tribunal Witness-1, it can be concluded beyond doubt that the O.P. is the son of Bharat Chandra Singha and Nayantara Sinha. It may also be accepted that Vikram Singha @ Bikram Singha was born on 06-01-1978. Exhibits - 1, 2, 9 shows that father and grandfather of the O.P. were residents at Jamirala village under Patharkandi P.S. prior to 1968 but there is no document on record to show that they were residents in Assam prior to 1966. The oral depositions of the OPW-2 convincingly states that he was also born on 20-09-1952 at Jamirala and studied primary school at Jamirala then at Patharkandi upto class- XI which may be relied upon. The Exhibits - 3 & 4 confirm that the father of the O.P. was serving Indian Air Force from 02-01-1972 for a period of 29 years till 2001. The citizenship and antecedents of the father of O.P. must have been verified during his induction to IAF in 1972, which may be presumed in view of depositions and evidences on record. The name of the O.P. appeared in Final NRC vide Exhibit- 6 being son of Bharat Chandra Singha and Nayantara Singha along with his grandmother, parents and younger brother. Appearance of O.P.'s name in FNRC, at least establishes his relationship, though not necessarily and lawfully establishes his citizenship due to pendency of this case. The pendency of the case against the O.P. before this Foreigners Tribunal might not be traced by the NRC Authority and as such his name appeared in Final NRC. His inclusion of name in Final NRC may be validated only if this reference case is answered in his favour. The names of other persons of his family in Final NRC may be conclusive proof of their Indian citizenship.

13. The issue rose by the Ld. AGP as to whether this NRC Assam has attained finality or not, needs to be addressed. NRC Assam was prepared as per provisions of the Citizenship Act 1955 (especially as mandated by Section 14A) and The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003 and under the orders and directions of the Hon'ble Supreme Court of India vide Case No. Writ Petition (Civil) 274 of 2009, Assam Public Works V. Union of India. Vide Judgment



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dated 17-12-2014 in above noted case along with Case No. Writ Petition (Civil) 562 of 2012, Assam Sanmilita Mahasangha V. Union of India and another case, reported in (2015) 3 SCC 1, preparation of NRC for Assam was directed by the Hon'ble Supreme Court, in para 48, in a time bound manner and fixed a time schedule whose last step was mentioned as "Finalization of Final updated NRC". This schedule was modified and date for Final Publication of NRC was extended by the Supreme Court several times. Lastly the date was extended "... for publishing the final N.R.C." up to 31-08-2019 vide order dated 23-07-2019 in the above mentioned case. The relevant Notification for preparation of NRC in Assam was first issued on 06-12-2013 by the RGCR, office of the RGI, MHA, Govt. of India which was lastly amended vide S.O. 2752(E) dated 31-07-2019 extending the date of completion on 31-08-2019. Accordingly Final NRC, (i.e. Supplementary List of NRC together with Draft NRC) has been published on 31.08.2019 which is available online in the official website of NRC Assam wherein also it's referred and mentioned as "Final NRC". This legal position is still in force. The National Identity Cards have yet to be issued to the Citizens whose names have been included in Final NRC. But there is no doubt that this NRC Assam published in 2019 is nothing but Final NRC.



14. The other issue is about applicability of Section 3 of the Citizenship Act. On careful perusal of Section 6A and Section 3 of the Citizenship Act it's clear that Section 6A deals with "persons come to Assam from Specified Territory" and their children are not covered by the provisions of section 6A but are covered within the ambit of section 3 of the Citizenship Act 1955. Thus Section 3 of the Citizenship Act is applicable in Assam as rest of India unless and until it's repealed, amended or struck down, but nothing of these has happened yet. Para 35 of the Judgment dated 17.12.2014 of Hon'ble Supreme Court in Writ Petition (Civil) 562 of 2012, Assam Sanmilita Mahasangha V. Union of India and two other cases, reported in (2015) 3 SCC 1 may be referred in this connection through which Challenge to Constitutional validity of Section 6A of the Citizenship Act has been referred to the Constitutional Bench of the Supreme Court. Subsequently, Challenge to Constitutional validity of Section 3(1)(a) & (b) of the Citizenship Act has been referred to the Constitutional Bench of the Supreme Court to be heard along with Writ Petition (Civil) 562 of 2012, Assam Sanmilita Mahasangha V. Union of India vide order dated 21-07-2015 in Writ Petition (Civil) 311 of 2015 with Writ Petition (Civil) 274 of 2009, Assam Public Works V. Union of India. The challenges are still pending consideration of the Constitution Bench of the Hon'ble Supreme Court of India. An Act is valid until struck down, amended or repealed and action taken under an act while it was in force remains valid after it's repealed. For example, the full bench decision of the Hon'ble Gauhati High Court in Anwar Ali -Vs.- State of Assam, reported in 2014 (3) GLT 500 may be referred to regarding validity of Judgments / Orders / Opinions passed by IM(D)T

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before IM(D)T Act was struck down by the Supreme Court in 2005 vide Sarbananda Sonowal V. Union of India, (2005) 5 SCC 665.

15. As concluded above, the O.P. Bikram Singha @ Vikram Singha is the son of Bharat Chandra Singha and Nayantara Singha who was born at village- Jamirala under Patherkandi Police Station in Karimganj District on 06-01-1978 while his father was in service of IAF. It may thus be presumed that O.P. was born in India prior to 01-07-1987 when his father was in continuous service of IAF. Therefore O.P. is a citizen of India by Birth in terms of section 3(1)(a) of the Citizenship Act 1955. On the other hand, the father of the O.P. Bharat Chandra Singha is a citizen of India by birth and through his father Madan Kumar Singha and/or mother Brisha Konya Devi vide Exhibits- 1, 2, 6, 9 and so being his son, O.P. is also a citizen of India. The Mother of the O.P. is also citizen of India vide Exhibit-6 and so also the O.P. on this count also being her son.

16. There is nothing adverse found on record against the O.P. so as to doubt the identity, relationship or linkage and the citizenship of the O.P.

17. **Considering the reference, representation of the O.P., evidences of O.P.W.-1 and O.P.W.-2, T.W.-1 and other materials available on record and in view of the above discussions, I am of the considered opinion that the Opposite Party is not a foreigner but a citizen of India. I, therefore opine that Vikram Singha alias Bikram Singha, Son of Bharat Chandra Singha, permanent resident of village Jamirala under Patherkandi police station in the district of Karimganj, Assam presently resident of 209, Site-3, Janta Flats, Vikas Puri, New Delhi-18 is not a foreigner. He is a citizen of India.**

18. The reference case is disposed of on contest and answered in negative.

19. Send copies of this Final Order cum Opinion to the Deputy Commissioner, Karimganj and the Superintendent of Police, Karimganj for information and necessary action.

Given under my hand and seal of this tribunal on this 10th day of September 2021.



Sishir Dey
10/09/21

(Sishir Dey)
Member (Attached)
Foreigners Tribunal-II, Karimganj

Member (Attached)
Foreigners Tribunal-II
Karimganj.

Copied by:

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10-09-2021

Compared by:

[Signature]
10/09/21
Bench Asstt.
Foreigners Tribunal-II
Karimganj

CERTIFIED TO BE A TRUE COPY

Mucinal Kanti Sharma
13/9/21

UDA Cum Accountant
Foreigners Tribunal-II
Karimganj