

GAHC010213542019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 6594/2019

1:PRATAP SAKHARU
S/O- LT BAHADUR SAKHARU, R/O- VILL- KARICHUK, P.S. DHEMAJI, DIST-
DHEMAJI,, ASSAM

VERSUS

1:UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI- 110006

2:STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:STATE COORDINATOR OF NATIONAL REGISTRAR OF CITIZENSHIP (NRC)
ASSAM
BHANGAGARH
G.S.ROAD

GHY-3

5:THE DY. COMMISSIONER
DIST- DHEMAJI
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
DIST- DHEMAJI
ASSA

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : ASSTT.S.G.I.

:::BEFORE:::

**HON'BLE MR. JUSTICE MANOJIT BHUYAN
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER (ORAL)

19.02.2020

(P.J. Saikia, J.)

In this writ petition, the petitioner Pratap Sakharu has challenged the opinion dated 25.01.2019, passed by the Foreigner Tribunal 1st, Dhemaji, in F.T./DMJ/2588/09 (Reference No. DMJ (B)/2006/v/1571, dated 27.11.2006).

Heard Mr. N. Borah, the learned counsel appearing for the petitioner. Also heard Ms. G. Hazarika, the learned counsel representing respondent no. 1, Ms. B. Das, the learned counsel for respondent No.3, Mr. U.K. Nair, the learned Standing Counsel, Foreigners Tribunal, representing respondent nos. 2, 5 and 6 and Ms. U. Das, the learned Standing Counsel, NRC, for respondent no.4.

On a reference made by the competent authority, the Tribunal issued notice to the petitioner asking him to prove his Indian Citizenship. He appeared before the Tribunal and filed his written statement. He introduced some documents in support of his claim. The documents are –

- 1) Exhibit-1 is the Gaonburah certificate showing Pratap Sakharu to be the son of

Lt. Bahadur Sakharu;

- 2) Exhibit-2 is the Birth Certificate issued by the Joint Director of Health Service showing that Pratap Sakharu was born to Bhandeer Sakaro and Mrs. Lakhi Sakharo on 13.11.1994;
- 3) Exhibit-3 is the Caste Certificate issued to Bahadur Sakharu;
- 4) Exhibit-4 is the Certificate of registration showing that Sitanath Sakharu, the grandfather of the petitioner was registered under the provision of Citizenship Act;
- 5) Exhibit-5 is an opinion of a Foreigner Tribunal holding that Bahadur Sakharu was a citizen of India;
- 6) Exhibit-6 is the Voter Lists of the year 1997 bearing the name of Bahadur Sakhar and his wife Lakhi Sakhar.

During the hearing of the case, the petitioner examined himself and another witness named Paramananda Deori, the Joint Director of Health Service, to prove Exhibit-2. The petitioner has stated in his evidence that his grandfather, Sithanath Sakharu, was an East Pakistan refugee and he came to India and registered his name in the year 1966. The petitioner stated that at one point of time, his father Bahadur Sakharu was declared as an Indian citizen by a Foreigner Tribunal. According to the petitioner, his father casted vote for the first time in the year 1997 at the age of 35.

The Tribunal held that the petitioner failed to file document showing that his father had entered India prior to 01.01.1966. Therefore, the petitioner was declared a foreigner of post 1971 stream.

We have carefully gone through the opinion of the Tribunal.

In this case, there is no dispute that Bahadur Sakharu, the father of the petitioner, was

declared as an Indian by a Tribunal on 30.11.2012. In this court the petitioner has filed a certified copy of another opinion given by a Foreigner Tribunal, Dhemaji on 25.01.2019, whereby, Lakhi Sakhar, the mother of the petitioner, was declared an Indian. If father and mother are both declared Indian by Foreigner Tribunals then we find ourselves foreclosed against all options, but to hold that the petitioner is also an Indian citizen. We find that the Tribunal erroneously held that the petitioner to be foreigner and therefore the opinion of the Tribunal is not sustainable in law. We find merit in this writ petition. Consequently, the opinion of the Tribunal, dated 25.01.2019, holding the petitioner to be a foreigner of post 1971 stream, is quashed.

The writ petition is accordingly allowed.

JUDGE

JUDGE

Comparing Assistant