

GAHC010271292018



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

Case No. : WP(C) 8640/2018

1:NURUL AMIN
S/O ABED ALI
VILL- MULADHARI
P.S. JAGIROAD,
DIST. MORIGAON,
PIN - 782413

VERSUS

1:THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, DEPARTMENT OF
HOME NEW DELHI-1.
2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF HOME
DISPUR
GUWAHATI-6.
3:THE DEPUTY COMMISSIONER
MORIGAON
PIN - 782446.
4:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
PIN - 782446.
5:THE ELECTION COMMISSION
GOVT. OF INDIA
NEW DELHI-1.
6:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION (NRC)
ASSAM
GUWAHATI -32.
7:THE FOREIGNERS TRIBUNAL NO. 1
MORIGAON
REP. BY THE STANDING COUNSEL OF THE TRIBUNAL PIN - 782446

Advocate for the Petitioner : MR. A ROSHID

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

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

26.02.2020

(Manojit Bhuyan, J)

Heard Mr. A. Roshid, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent no.1. Also heard Mr. J. Payeng, learned counsel representing respondent nos.2, 3, 4 and 7; Ms. B. Das, learned counsel for respondent no.5 and Ms. S. Khanikar, learned counsel for respondent no.6.

Petitioner assails opinion dated 25.10.2018 passed by the Foreigners' Tribunal (1st), Morigaon, Assam in Case No. F.T.(C) 771/2010, declaring him to be a foreigner/illegal migrant, having illegally entered into India after 25.03.1971.

For the purpose of discharging burden as required under section 9 of the *Foreigners Act, 1946* to prove that petitioner is not a foreigner, as many as 10 (ten) documents were exhibited by him, the particulars of which may be noticed as under :

- (i) Exhibit-A – Copy of Voter List of 1965, in the name of one Abed Ali projected as father of the petitioner of village Moiradhvaj, P.S.-Dhing, District-Nagaon, under No 86 Dhing LAC.
- (ii) Exhibit-B – Copy of Voter List of 1970, in the name of one Abed Ali projected as father of the petitioner of village Moiradhvaj, P.S.-Dhing, District-Nagaon, under No 86 Dhing LAC.
- (iii) Exhibit-C - Copy of Voter List of 1997, in the name of the petitioner at the age of 30 years and one Halima Kha, projected wife of the petitioner of village Muladhari, P.S. Jagiroad, District-Morigaon, under 79 No. Jagoroad (SC) LAC.
- (iv) Exhibit-D - Copy of Voter List of 2014, in the name of the petitioner and one Malima Khatun, projected wife of the petitioner of village Muladhari, P.S. Daratul, District-Morigaon, under 79 No. Jagoroad (SC)LAC.
- (v) Exhibit-E – Certificate issued by the Gaonburah, certifying that petitioner got married with one Halima Khatun.

- (vi) Exhibit-F - Copy of Voter List of 1970, in the name of one Hasen Ali, father of the projected wife of the petitioner.
- (vii) Exhibits-G, H, I, J – Birth Certificates of petitioner's sons and daughters.

Petitioner examined himself as DW-1. One Halima Khatun, projected wife of the petitioner deposed as DW-2.

The petitioner while trying to establish linkage to Abed Ali of Exhibits-A and B Voter Lists of 1965 and 1970, pertaining to village Moiradhvaj, have placed reliance in the Exhibit-C and Exhibit-D Voter Lists of 1997 and 2014 respectively. Important to notice is that whereas Exhibits-A and B are from village Moiradhvaj, the Exhibits-C and D pertain to village Muladhari. Though statement is made in the written statement with regard to shifting from village Moiradhvaj to Muladhari, however, no evidence in that regard was laid. Mere statement without supporting evidence or documents cannot go to prove that name Abed shown against the name of the petitioner of village Muladhari in the Voter Lists of 1997 and 2014 is the same Abed Ali of village Moiradhvaj in the Voter Lists of 1965 and 1970. Mere statement is not enough to be considered as a reliable piece of evidence. Moreover, the petitioner stated in his evidence that they are three brothers but no sibling came forward as witness to support the case of the petitioner. Another link document was the Certificate issued by the Gaonburah at Exhibit-E. The Certificate rendered itself as inadmissible in evidence, inasmuch as, the author of the said Certificate was not examined to prove the same and the contents thereof. The Exhibit-F has no relevance in this case. The Exhibits-G, H, I, and J are the birth certificates of the sons and daughters of the petitioner. From the very nature of it, the same do not serve any purpose to the petitioner for establishing citizenship.

The statement of DW-2 i.e. Halima Khatun, who claimed to be the wife of the petitioner, cannot be relied upon in the absence of any documents showing relationship between Abed Ali and the petitioner. Oral testimony of DW-2 alone, sans any documentary support, cannot be treated as sufficient to prove linkage or help the cause of the petitioner. We would reiterate that in a proceeding under the *Foreigners Act, 1946* and the *Foreigners (Tribunals) Order, 1964* the evidentiary value of oral testimony, without support of documentary evidence, is wholly insignificant. Oral testimony alone is no proof of citizenship. The evidence of DW-2, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected father.

As the primary issue in a proceeding under the *Foreigners Act, 1946* and the *Foreigners*

(Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not, the relevant facts being especially within the knowledge of the proceedee, therefore, the burden of proving citizenship absolutely rests upon the proceedee, notwithstanding anything contained in the *Evidence Act, 1872*. This is mandated under section 9 of the aforesaid Act, 1946. In the instant case and as observed above, the petitioner not only failed to discharge the burden but also utterly failed to make proof of the most crucial aspect, that is, in establishing linkage to his projected father.

On the available materials, we find that the Tribunal rendered opinion/order upon due appreciation of the entire facts, evidence and documents brought on record. We find no infirmity in the findings and opinion recorded by the Tribunal. We would observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal. No case is made out that the impugned opinion/order was rendered without affording opportunity of hearing or in violation of the principles of natural justice and/or that it suffers from illegality on any ground of having been passed by placing reliance on evidence which is legally impermissible in law and/or that the Tribunal refused to admit admissible evidence and/or that the findings finds no support by any evidence at all. In other words, the petitioner has not been able to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion.

We find no merit in the present petition. Accordingly, the same stands dismissed, however, without any order as to cost.

JUDGE

JUDGE

Comparing Assistant