

GAHC010123232019



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

Case No. : WP(C) 4116/2019

1:IDRISH ALI
S/O- LT ALI BOX, R/O- NO.2 KOIRIGAON, SARUPATHAR, DIST- GOLAGHAT
ASSAM

VERSUS

1:THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NIRBACHAN SADAN
ASHOK ROAD
NEW DELHI

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

4:THE NATIONAL REGISTER OF CITIZENS
REP. BY THE STATE COORDINATION
ASYUT PLAZA
BHANGAGARH
GHY-5
DIST- KAMRUP (M)
ASSAM

5:THE DY. COMMISSION

GOLAGHAT
ASSAM

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

Advocate for the Petitioner : MR. P SHARMAH

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

:::BEFORE:::

HON'BLE MR. JUSTICE MANOJIT BHUYAN
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA
JUDGMENT & ORDER (ORAL)

27.02.2020

(P.J. Saikia, J.)

Heard Mr. P. Sharmah, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned CGC, representing respondent no. 1; Ms. B. Das, learned Standing Counsel, Election Commission, representing no. 2; Mr. J. Payeng, learned Standing Counsel, Foreigners Tribunal, representing respondent nos. 3, 5 & 6; and Ms. U. Das, learned Standing Counsel, NRC, representing respondent no. 4.

In this writ petition, the petitioner, Md. Iddrish Ali, has assailed the opinion dated 05.09.2018, passed by the Foreigners' Tribunal, Jorhat, Assam, in Case No. FTG(D) 486/2011, declaring him to be a foreigner.

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 a Written Statement, wherein, he claimed that he is the son of Ali Box, who is also known as Ali Box Ali. His grandfather was Lt. Joidor. He claimed that Oli Box is his paternal uncle. The petitioner has stated in

the Written Statement that he has been residing at Village No. 2, Kairigaon under Sarupather Police Station in the District of Golaghat, Assam. According to the petitioner, he is actually a permanent resident of a village Moiradhvaj under Dhing Police Station in the District of Nagaon, Assam. His grandfather and father are also residents of the said Village.

The petitioner further stated in the Written Statement that in the year 1983, there was a flood in his Village so he had shifted to No. 2, KairigaonVillageatSarupather. He has stated that in the years 1985 & 1989, he had casted vote in Moiradhvaj Village. He was born and brought up in that Village. His grandfather's name appeared in the Voter List of 1965. The petitioner claimed that since 1965 to till 1989, his family used to cast their votes at Moiradhvaj Village. But, when he shifted to No. 2, Kairigaon Village, his name was displayed in the Voter List of Golaghat District as 'D' voter. So, since 1997, he has been shown in the Voter List as 'D' voter.

During the hearing of the case, the petitioner produced the following documents before the Tribunal –

- 1) Exhibit-1 is the Village Gaon Bura Certificate stating the petitioner to be resident of No. 2, Kairigaon Village;
- 2) Exhibit-2 is another Village Gaon Bura Certificate stating the petitioner to be resident of Moiradhvaj Village;
- 3) Exhibit-3 is the Voter List of 1965, wherein, Ali Box and Oli Box appeared;
- 4) Exhibit-4 is the Voter List of 1970, wherein, Ali Box and Oli Box appeared;
- 5) Exhibit-5 is the Voter List of 1975, wherein, Ali Box and Oli Box appeared;
- 6) Exhibit-6 is the Voter List of 1985 displaying the name of the petitioner;
- 7) Exhibit-7 is the Voter List of 1989 displaying the name of the petitioner with his wife;
- 8) Exhibit-8 is the Certificate issued by the Election Officer, Dhansiri, Sarupather certifying the petitioner to be a 'D' voter;
- 9) Exhibit-9 is another certificate issued by the Election Officer, Dhansiri,Sarupather certifying the petitioner to be a 'D' voter;
- 10) Exhibit-10 is another certificate issued by the Election Officer, Dhansiri, Sarupather

certifying the petitioner to be a 'D' voter; and

- 11) Exhibit-11 is the copy of Jamabandi containing the names of the projected father and the projected uncle of the petitioner.

On conclusion of the hearing, the Tribunal rejected the evidence and declared the petitioner to be a foreigner.

We have carefully gone through the opinion of the Tribunal. Here at this stage, we would quote the manner of appreciation of Exhibits 6 & 7 by the Tribunal. It reads as under –

“Exts. 6 and 7 are the certified copies of the voters lists of 1985 and 1989 respectively wherein, the said OP himself is named. The said OP has admitted that his is presently 65 years of age meaning thereby, that he born sometime in 1953. He was qualified to get his name enrolled in the voter list in 1974 but surprisingly, he is not named even in 1975 (Ext 5).

Moreover, as specifically indicated above, the post 1971 voters lists have no proper linkages in any manner with the pre cut of voters lists, hence, Exts. 6 and 7 are of no help to him.

The Exhibit-6 is the Voter List of 1985, wherein, the name of the petitioner appears as a son of Ali Box. The age of the petitioner has been stated to be 28 years. On the other hand, Exhibit-7 is the Voter List of 1989, wherein, the name o the petitioner appears. While tendering oral evidence, the petitioner claimed to be 65 years. Therefore, the Tribunal held that the petitioner should have been born sometime in the year 1953 and by the year 1974, he should have attained the capacity of casting vote. The Tribunal noticed that in the Voter List of 1975, marked as Exhibit-5, the petitioner’s name does not appear. The Tribunal also noticed that post 1971 Voter List have no proper linkages in any manner with “pre cut of Voter List” and therefore, Exhibits 6 & 7 are of no help to the petitioner.

We have no doubt that the Tribunal has committed an error while appreciating Exhibits 6 & 7.

Here at this stage, the difference between a Tribunal and a Court must be stated. The Tribunal is established for quick disposal of the matters sent to it. Unlike a regular Court, the laws of evidence are not strictly applicable in a Tribunal. Courts exercise judicial power to the State to maintain and

uphold the rights of the citizens. It punishes the wrong doers and adjudicates upon disputes. The Tribunal, on the other hand, are special alternative institutional mechanisms usually established under a Statute to decide disputes arising with reference to that particular Statute.

In *Union of India Vs. R. Gandhi* reported in (2010) 11 SCC 1, the Supreme Court has held as under –

Though both Courts and Tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and Tribunals. They are :

(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are Tribunals. But all Tribunals are not courts.

(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a Judicial Member and a Technical Member who is an 'expert' in the field to which Tribunal relates. Some highly specialized fact finding Tribunals may have only Technical Members, but they are rare and are exceptions.

(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and [Evidence Act](#), requiring an elaborate procedure in decision making, Tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of [Evidence Act](#).

Reverting to the case in hand, the strict rules of evidence are not applicable in a tribunal. Nothing is required to be proved beyond all reasonable doubt. We find that the observation of the Tribunal pertaining to Exhibits 6 & 7 is perverse and therefore, the entire opinion of the Tribunal suffers from perversity. Such an opinion must not sustain.

Therefore, we find merit in this writ petition and the impugned opinion stands set aside. The matter is remanded to the Tribunal for a fresh opinion after considering/appreciating the Exhibits 6 & 7 on merit and at the correct perspective.

It is stated that the petitioner was taken into custody since 21.09.2019 and he has been lodged at Jorhat Detention Camp. In this situation, we direct the Superintendent of Police (B), Golaghat to make necessary arrangement to produce the petitioner, Md. Iddrish Ali, before the Foreigners Tribunal, Jorhat, Assam on 17.03.2020. After such production, the petitioner may make application for bail along with documents in his support. Such application shall be considered by the Tribunal and necessary order for bail shall be passed on terms and conditions that may be set down by the Tribunal. It is expected that the Tribunal will fix the next immediate date for hearing within a

reasonable time. We also make it clear that the proceeding before the Tribunal shall be concluded within a period of 60 days from 17.03.2020.

We further make it clear that if the petitioner defaults in appearing before the Tribunal on the dates to be fixed in the case and also fails to take required steps, it will be open to the Tribunal to pass such order or orders as may be deemed fit and proper and in accordance with law.

To the extent, the writ petition stands allowed.

For the purpose of concluding the reference case within the time limit as specified above, the Tribunal shall act upon the certified copy of this order which the petitioner is permitted to furnish before the Tribunal on the date of appearance, i.e. 17.03.2020. The petitioner is also permitted to supply a copy of this order to the Superintendent of Police (B), Golaghat, for doing the needful in terms of the above.

Send back the case records forthwith.

JUDGE

JUDGE

Comparing Assistant