

GAHC010125962020



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

Case No. : WP(C)/3687/2020

FAIJUR RAHMAN @ FAIJUL RAHMAN
S/O LT. MAHFAZUR RAHMAN @ MAHFUZUR RAHMAN @ MAHFUZUR
RAHMAN, R/O HOUSE NO. 14, TIPONG LALPAHAR, NEAR TIPONG M.E.
SCHOOL, LALPAHAR PATHER GAON, P.O. TIPONG, P.S. LEKHAPANI, DIST.
TINSUKIA, PIN-786179

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI-110001

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-781006

3:THE ELECTION COMMISSION OF INDIA
REP .BY THE CHIEF ELECTION COMMISSION NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN-781005

5:THE FOREIGNERS TRIBUNAL
TINSUKIA
ASSAM
DIST. TINSUKIA
ASSAM
PIN-786125

6:THE DEPUTY COMMISSIONER
TINSUKIA
ASSAM
P.O. TINSUKIA
DIST. TINSUKIA
ASSAM
PIN-786125

7:THE SUPERINTENDENT OF POLICE
(BORDER)
TINSUKIA
P.O. TINSUKIA
DIST. TINSUKIA
ASSAM
PIN-786125

8:THE OFFICER IN CHARGE OF LEKHAPANI POLICE STATION
P.O. LEKHAPANI
DIST. TINSUKIA
ASSAM
PIN-78617

Advocate for the Petitioner : MR. M AHMED

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER
(ORAL)

30-11-2022

[N. Kotiswar Singh, JJ]

Heard Ms. D. Ghosh, learned counsel for the petitioner and Mr. G. Sarma, learned Standing Counsel, F.T. appearing for respondent nos. 5, 7 & 8. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Asstt. SGI for respondent no.1; Mr. A.I. Ali, learned Standing Counsel, ECI, appearing for respondent no.3, Ms. L. Devi, learned Standing Counsel, NRC, appearing for respondent no.4 and Ms. K. Phookan, learned State Counsel, Assam, appearing for respondent no.2 & 6.

2. By filing this petition the petitioner has challenged the impugned opinion dated 22.06.2020 passed by the learned Foreigners Tribunal, Tinsukia, in F.T. Case No.1120/D/2006 by which the petitioner has been declared as a foreigner of post 25.03.1971.

3. The learned counsel for the petitioner submits that the petitioner had duly appeared before the Tribunal on receiving the summon and also filed a number of documents to prove that he is an Indian and not a foreigner. The learned counsel for

the petitioner submits that the petitioner had submitted one Permanent Residence Certificate (PRC) issued by the Deputy Commissioner, Karimganj as well as one Identification Certificate issued by the Secretary, Lamajuar Gaon Panchayat before the Tribunal which certified that he is a permanent resident of Karimganj district. The petitioner had also submitted a number of other documents to show his linkage with his projected parents including voter lists of 1966, 1970 etc. The petitioner also submitted the Jamabandi copy of land relating to a land which he inherited from his father. Other documents have also been relied upon. Unfortunately, during the COVID -19 pandemic due to lockdown, it became difficult on the part the petitioner to effectively pursue his case. It has been submitted that the proceeding was pending before Foreigners Tribunal, Tinsukia, whereas he is the permanent resident of Karimganj which added to his woes, inasmuch as, he had to frequently travel from Karimganj to Tinsukia to pursue his proceeding pending before the FT, Tinsukia.

4. Under the circumstances, the petitioner could not take effective steps for proving the aforesaid certificates, more particularly, the Permanent Residence Certificate issued by the deputy Commissioner as well as the School certificate, jamabandi etc which would conclusively prove that the petitioner is indeed an Indian and not a foreigner. It has been also submitted by the learned counsel for the petitioner that some of the documents were not subjected to cross-examination because of the absence of learned Assistant Government Pleader on account of elevation as a Member of the Tribunal.

5. Accordingly, it has been submitted that there were many reasons as mentioned above, particularly, during the COVID-19 pandemic period when the strict lockdown was imposed because of which the petitioner could not take effective steps for proving his documents. It has been submitted that otherwise the petitioner has a very sound case with reliable and credible documents to show that he is an Indian and not a foreigner.

6. Under the circumstances, it has been submitted that he may be given another opportunity to prove the aforesaid documents only to show that he is an Indian.

7. We have heard the learned counsel for the parties and perused the documents.

8. We have also perused the original record which has been requisitioned from the learned Foreigners Tribunal, Tinsukia.

9. We have noted that the petitioner had indeed filed the aforesaid documents in support of his claim that he is an Indian and not a foreigner. We have also gone through the records which indicated that during the pendency of the proceedings, the COVID-19 pandemic had broken out which resulted in serious disruptions in the functioning of the Tribunal, because of the strict lockdown imposed at that time. We also understand that it would be difficult for one person to travel from one district to another, more particularly, during that period.

10. Considering the above circumstances and also considering the documents which had been placed on record before the learned Tribunal, we are of the view that the

petitioner may be afforded another opportunity to appear before the learned Tribunal to prove the aforesaid documents and other documents relied upon by the petitioner.

11. Accordingly, we allow this petition by setting aside the impugned order dated 22.06.2020 passed by the learned Foreigners Tribunal, Tinsukia, in F.T. Case No.1120/D/2006. The petitioner shall take necessary steps for proving the aforesaid documents having relied upon by him.

The petitioner shall accordingly, appear before the Foreigners Tribunal within 15 (fifteen) days from today to enable him to prove the documents.

12. Learned counsel for the petitioner submits that the petitioner may be allowed to submit the additional documents. This is an aspect for which the petitioner can file appropriate application before the Tribunal and the Tribunal will consider the same in accordance with law.

13. Since the petitioner is already on bail by order dated 29.09.2020 passed by the Division Bench of this Court, he would continue to remain on bail on similar terms and conditions till the appropriate fresh opinion is rendered by the Foreigners Tribunal, Tinsukia, Assam.

However, the petitioner shall not leave his jurisdiction without furnishing the details of the place of destination and his place of stay to the Superintendent of Police (Border), Tinsukia including relevant contact/mobile number, so that the Superintendent of Police (Border), Tinsukia can contact to him as and when required.

It is made clear that failure on the part of the petitioner to provide relevant mobile/contact number will warrant recalling of earlier bail order.

14. With the above observations and directions, the writ petition stands disposed of.

15. Copy of this order be furnished to the Superintendent of Police (B), Tinsukia for doing the needful.

16. The LCR be remitted forthwith to the concerned Tribunal.

JUDGE

JUDGE

Comparing Assistant