



IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 7229/2017

Bablu Paul @ Sujit Paul,
S/O Late Boloram Paul,
Village/PO-Patharkandi, PS-Patharkandi,
District-Karimganj, Assam.

.....*Petitioner.*

-Versus-

- 1.** The Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Home Affairs, New Delhi.
- 2.** The State of Assam,
represented by the Commissioner & Secretary to the
Govt. of Assam, Home Department,
Dispur, Guwahati-6.
- 3.** The Deputy Commissioner,
Karimganj.
- 4.** The Superintendent of Police (B),
Karimganj.
- 5.** The Officer-in-Charge,
Patharkandi Police Station,
District-Karimganj.

.....*Respondents.*

For the Petitioner:

Mr. H.R.A. Choudhury (Sr. Adv.),
Mr. F.U. Borthuiya,
Ms. S. Das,
Mr. A. Matin.

.....*Advocates.*

For the Respondents: Asstt.S.G.I.,
Mr. J. Payeng, SC, FT,
Ms. U. Das, GA, Assam.Advocates.

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MRS. JUSTICE MALASRI NANDI

Dates of Hearing : 23.11.2021 & 14.12.2021

Date of Judgment : **14th December, 2021**

JUDGMENT AND ORDER (ORAL)

[N. Kotiswar Singh, J.]

Heard Mr. F.U. Borbhuiya, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Assistant Solicitor General of India, for respondent No.1; Mr. J. Payeng, learned special counsel, FT, appearing for respondent Nos.2, 4 and 5 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.3.

2. In this petition, the petitioner has challenged the order dated 08.05.2017 passed by the learned Foreigners' Tribunal-II, Karimganj, Assam, in F.T. Case No.350/2015 by which the petitioner was declared a foreigner, who came to India illegally from Bangladesh on or after 25.03.1971.

3. The said impugned order has been challenged on the grounds, inter alia, that the petitioner when he was about 2 years old had entered India with his father Boloram Paul along with his grandfather Chintaharan Paul on 30.09.1964 from the then East Pakistan and they were given refugee status by the Government of India as clearly evident from the certificate issued by the Government of West Bengal to the members of the minority community in East Pakistan desiring to stay in India. According to the petitioner, the petitioner's grandfather though entered through the West Bengal, soon thereafter, settled in the State of Assam and accordingly, his name appeared in the voters' list of 1966 and thereafter, he died. Accordingly, it has been submitted that since the petitioner's grandfather was an Indian citizen who was casting vote since 1966, the petitioner is to be treated as an Indian.

4. The learned Tribunal, however, based on the materials on record including the deposition of the petitioner before the Tribunal took the view that even if the petitioner along with his father had come from East Pakistan in the year 1964, the petitioner was born in East Pakistan and the petitioner remained along with his family in Calcutta. The Tribunal also noted that the petitioner's father also purchased a land in Calcutta sometime in the year 1976. The Tribunal also noted that the petitioner studied upto Class-V in Gandhi Colony Madhyamik Vidyalaya in Kolkata and after attaining his majority was engaged in jewellery business at Jadavpur, Kolkata and it is on record that the petitioner

came to Patharkandi, Karimganj, Assam, only in the year 1984 and settled there and started his jewellery business.

5. The learned Tribunal, on the basis of the materials on record did not believe the plea of the petitioner on finding certain discrepancies in the records regarding his grandfather, his father as well as his mother and took the view that these documents were collusively obtained by the petitioner and declared the petitioner to be an illegal immigrant from Bangladesh who entered India after 25.03.1971.

6. Learned counsel for the petitioner has urged that the aforesaid finding of the learned Tribunal is contrary to the materials on record, as it is clearly on record that the petitioner had entered along with his father and grandfather in 1964. It is also on record that the petitioner's grandfather was a voter in Assam in 1966 and being the grand son of the aforesaid Chintaharan Paul (grandfather), the petitioner is claiming to be a citizen of this country, even though he might have stayed in Calcutta for certain period as mentioned above as he ultimately shifted to Cachar, Assam.

7. Learned special counsel, FT, however, has submitted that there is nothing wrong with the opinion rendered by the learned Foreigners' Tribunal.

8. After hearing the learned counsel for the parties and on perusal of the materials on record, we find a document issued by the Government of West

Bengal, dated 07.10.1964 issued to the members of the minority community of East Pakistan who had entered India during the aforesaid period. In the said document, the name of his father Boloram Paul is shown with the name of his grandfather Late Chintaharan Paul along with the name of the petitioner Bablu Paul and his brother Indrajit Paul. The aforesaid document in original was filed before the Tribunal. The said document also records the earlier address in Pakistan i.e. village Danish Para, PS-Sirajdikhan, Sub-Division Munsiganj, Dhaka, where the petitioner and his parents were earlier staying and the address in India i.e. C/o Subodh Chandra Bosu Majumder, Calcutta-32.

9. The petitioner testified before the Tribunal about the aforesaid fact of entry in West Bengal, India. As far as the entry of the petitioner is concerned, there appears to be credible evidence on record. So we also hold that the petitioner entered India from East Pakistan sometime in the year 1964 along with his father and grandfather.

10. Even though the learned Tribunal has made some observation about the documents relied upon by the petitioner, in our opinion, it may not be necessary to examine those in view of the fact that even if a person claims to be a deemed citizen of this country by virtue of Section 6A(2) of the Citizenship Act, 1955, who had come from East Pakistan and who is of Indian origin, the following conditions must be also fulfilled, namely, (i) he came to Assam before 01.01.1966 from the specified territory and (ii) he had been ordinarily residing

in Assam since the date of the entry in Assam. Thus, from the reading of Section 6A(2), in order to claim to be a deemed citizenship, firstly, the person must be of Indian origin, secondly, he must come before 01.01.1966 to Assam, thirdly, he must come to Assam from the specified territory and fourthly, he must have been ordinarily resident of Assam since the date of entry in Assam.

11. In the present case, what has been found is that though the petitioner entered India from the specified territory i.e. East Pakistan, now Bangladesh, before 01.01.1966 as evident by the document issued by the Government of West Bengal referred to above, there is no evidence to show that after he had entered Assam and that he had been ordinarily residing in Assam since the date of entry. By his own admission he had entered India in West Bengal, not in Assam and he had also stayed and settled in Kolkata, West Bengal till 1984 and later he shifted to Assam only in the year 1984.

12. Under the circumstances, we are of the view that even if the petitioner is able to prove that he had entered India from East Pakistan on 30.09.1964, he cannot avail the benefit of deemed citizenship under Section 6A(2) of the Citizenship Act, 1955 as he does not fulfill all the conditions stipulated in the said Section. The question which naturally will arise is, what will be the status of the petitioner, who had entered India in the year 1964 from East Pakistan and continued to stay in India? Is he to be declared a foreigner?

13. Considering the evidence on record, there is no doubt that the petitioner

had entered India in 1964 and thereafter, stayed in Calcutta till 1984 when he shifted to Assam thereafter and settled. In view of the above, we are not in agreement with the learned Tribunal that the petitioner had obtained the documents collusively to show that he and his mother came to India from East Pakistan in the year 1964, and with the declaration by the Tribunal that the petitioner is a foreigner who came to India illegally from Bangladesh on or after 25.03.1971.

14. Even though we are not in agreement with the aforesaid finding and conclusion of the learned Tribunal that he is a foreigner of post 1971 stream, we are also unable to declare him as Indian citizen as claimed by him, for the fact remains that he was not born in this country but was born in East Pakistan, now Bangladesh and entered India in 1964. As to whether a person who enters India in 1964 from East Pakistan can be considered to be an Indian or not, there is no provision under the Citizenship Act, 1955 except for Section 6A(2) and (3) of the Act.

15. Under Section 6A(2) of the Citizenship Act, 1955, a person entering India before 01.01.1966 can be deemed to be a citizen provided he enters Assam from the specified territory (East Pakistan/Bangladesh) and he has been ordinarily residing in Assam after the date of entry. Thus unless a person enters Assam and is a ordinarily resident of Assam after entry, he cannot get the benefit of deemed citizenship.

16. As regards persons who entered India (Assam) between 01.01.1966 and 25.03.1971, such persons can get the benefit of citizenship, if they register themselves before the competent registering authority and those who entered after 25.03.1971, they will be declared as foreigners.

17. The case of the petitioner definitely does not come under the latter two categories as he entered India before 01.01.1966. Therefore, the only issue to be decided is whether the petitioner can get the benefit of deemed citizenship under the first category under Section 6A(2) of the Act. As mentioned above, since the petitioner did not enter from the specified territory in Assam, but West Bengal, and also as he has not been shown to be a resident of Assam ordinarily after his date of entry in 1964, he cannot get the benefit of deemed citizenship conferred under Section 6A(2) of the Citizenship Act, 1955.

18. Under such circumstances, the question which arises is, whether the petitioner will be declared a foreigner, in which event, he will be liable to be deported also.

19. In this connection, one may notice the amendment made in sub-section (1) to clause (b) of Section 2 of the Citizenship Act, 1955 by the Government of India through the Citizenship (Amendment) Act, 2019, provided, inter alia, that *"any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by*

the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act."

20. This gives a window of opportunity for any person of Indian origin and who belongs to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community, to get the advantage of not being treated as an illegal migrant to get registration as citizenship under Section 5 of the Act. Section 5 of the Citizenship Act, 1955 provides for grant of citizenship upon registration in respect of those persons who are not illegal migrants to India provided he belongs to any of the following categories:-

- (a) a person of Indian origin who is ordinarily resident in India for seven years before making an application for registration;
- (b) a person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- (c) a person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- (d) minor children of persons who are citizens of India;
- (e) a person of full age and capacity whose parents are registered as citizens of India under clause (a) of this sub-section or sub-section (1) of section 6;
- (f) a person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and 3 [is ordinarily resident in India for

twelve months] immediately before making an application for registration;

- (g) a person of full age and capacity who has been registered as an overseas Citizen of India Cardholder for five years, and who is ordinarily resident in India for twelve months before making an application for registration.”

21. In the present case, the petitioner admittedly entered India along with his parents in 1964 but that was without any valid documents but was given shelter by this country. Merely because he was given shelter does not mean that he is a legal migrant as he did not possess any valid document/passport to enter India. Thus, he remains an illegal migrant, in which event he could not get the benefit of citizenship by way of registration as provided under Section 5 of the Act as it originally stood. However, the said bar to get citizenship by registration has been lifted by the aforesaid Citizenship (Amendment) Act, 2019, as it provides that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before the 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act. Thus, in the present case, though we do not agree with the finding of the learned Tribunal that he was an illegal migrant of post 25.03.1971 stream, we

are of the view that the present petitioner is a Hindu who entered into India before 31.12.2014 and he was given permission to settle in India, he can get the benefit of citizenship if he applies for citizenship by way of registration under Section 5 of the Citizenship Act, 1955 as he fulfills the conditions mentioned under Section 5.

22. Since the petitioner cannot be considered to be an illegal migrant by virtue of the Citizenship (Amendment) Act, 2019 and since he had been staying in India for more than seven years from now having entered in 1964, in our view, he will be entitled to be considered for grant of citizenship by registration under Section 5 of the Citizenship Act, 1955.

23. In this connection, we would like to observe that provisions of Section 6A(2) of the Citizenship Act, 1955 has to be interpreted in a manner which serves the purpose of said Section. The aforesaid Section has been incorporated in the Citizenship Act, 1955 to deal with certain claims for citizenship in terms of the Assam Accord which is beneficial in nature to those persons who had come from East Pakistan/Bangladesh prior to 01.01.1966 and those who entered thereafter, upto 25.03.1971. Though Section 6A(2) provides that all persons of Indian origin who came before 1st day of January, 1966 to Assam from the specified territory, it has to be interpreted in a manner which will sub-serve the purpose of the Act. In other words, a person may come from specified territory not directly to Assam but to other State as in West Bengal, and subsequently to

Assam, however, such entry in other territory of the country other than Assam would be purely of temporary and transitory in nature and if the ultimate destination is Assam, even if the person has entered India through other State like West Bengal, but ultimately soon thereafter, comes to Assam and resides in Assam, in our view, such a person would be entitled to the benefit guaranteed under Section 6A(2) of the Act. However, if the person does not come to Assam soon after entering to any other State from the specified territory, but chooses to remain in that part of the State, as in the present case, perhaps such a person may not get the benefit of deemed citizenship as granted under Section 6A(2) of the Act.

24. In the present case, the petitioner entered India from the specified territory before 01.01.1966, but in the territory of West Bengal and opted to stay and settle there for a long period, and came to Assam belatedly only in the year 1984. Thus, it cannot be said that he came to Assam from Bangladesh i.e. from the specified territory. If the petitioner soon after his entry in West Bengal in 1964 came to Assam and settled in Assam even after few months of stay in West Bengal, it can be considered to be of purely a transitory or a temporary arrangement, and perhaps he may get the benefit granted under Section 6A(2) of the Act. However, since the said situation has not arisen in the present case, we leave it to be decided in appropriate cases.

25. Accordingly, for the reasons discussed above, we allow this petition by

setting aside the impugned order dated 08.05.2017 passed by the learned Foreigners' Tribunal-II, Karimganj, Assam, in F.T. Case No.350/2015 and direct the petitioner to make an application for registration as citizen of India under Section 5 of the Citizenship Act, 1955 immediately, before the competent authority, and the competent authority on receipt of the such an application will pass appropriate orders regarding citizenship of the petitioner.

26. It is also made clear that till consideration of such an application that may be filed by the petitioner, he shall not be subjected to any coercive action by the State/authorities.

27. With the above observation and direction, the present petition stands disposed of.

Sd/- Malasri Nandi
JUDGE

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant