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26-05-2022	26-05-2022	03-06-2022	03-06-2022	13-07-2022

BEFORE THE MEMBER, FOREIGNER'S TRIBUNAL NO. 6

:::::::::::BARPETA:::::::::::

(Copy of the Order Dtd. 09-05-2022 passed by Smti. B. Das, Member, Foreigner's Tribunal No: 6th, Barpeta, Assam in connection with FT Case No. F.T. 54/17 reference Case No. 11/2002)

Case No: - F.T. 54/17

Corresponding to

R/ Case No. 11/2002)

STATE OF ASSAM

.....Petitioner, represented by S.P(B), Barpeta

-VS-Referring authority

Mohan Roy

S/o:- Lt. Mohindra Roy,

Vill:- Khairabari

P.S:- Barpeta Road,

Dist:- Barpeta, Assam

..... SuspectOpposite Party.

Under the Foreigners Act , 1946 and
Foreigners (Tribunal) order, 1964

Present: **B. Das,**

Member, Foreigner's Tribunal No: 6

Barpeta, Assam

Appearance :- Advocate for the Petitioner Smti. B. Das(A.G.P.)
Advocate for the O.P. Mr. A. Choudhury.

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Barpeta



OPINION

1. This case was forwarded by the Superintendent of Police (B), Barpeta under the IM(D)T Act vide Reference IM(D)T No. 11/2002, expressing doubt about the nationality of the opposite party (O.P. for short) with a prayer to decide as to whether the O.P. is or not an illegal migrant as the O.P. during verification/enquiry could not produce any document in proof of her nationality or citizenship of India. Thereafter, the Hon'ble Supreme Court in **Sarbananda Sonowal -V/S- Union of India (2005) 5 S.C.C. 665** declared the IM(D)T Act, 1983 and the rules made there under, as ultra-vires the constitution and struck down the said IM(D)T Act, and the cases pending shall transferred to the Foreigners' Tribunal under the Foreigners' Act and rules for decision prescribed under the Foreigners' Tribunal order, 1964. Subsequently, the case was transferred to the newly created Tribunal No. 6th, vide No. PLB/160/2013Pt-I/112 dated 02-11-2015, on jurisdiction wise for decision/opinion as per provisions of then Foreigners' Act, 1946.

2. On receiving the above noted case, this Tribunal had registered the case, issued notice to the suspected proceedee/O.P. Accordingly, O.P. appeared, filed her written statement (in short W/S), denying the allegation leveled against her. She adduced Evidence-In-Chief on Affidavit (here in after called the Affidavit) along with certain documents. To substantiate her claim O.P. has exhibited following documents:-

- (a) Ext-A: is the copy of a Relief and Rehabilitation certificate.
- (b) Ext-B: is the copy of a jamabandi.
- (c) Ext-C: is the land revenue payment receipt.
- (d) Ext-D: is the copy of a registration certificate.
- (e) Ext-E: is the certified voter list of the year 1971.
- (f) Ext-F: is the certified voter list of the year 1989.
- (g) Ext-G: is the certified voter list of the year 1997
- (h) Ext-H: is the copy of a Voter Id of Mohan Ray.

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- (i) Ext-I: is the certified copy of a judgment.
 (j) Ext-J: is the certified copy of a judgment.



Points for determination:-

3. Now, the point of determination is as to whether the Proceedee, Mohan Roy, S/o- Lt. Mohindra Roy, Vill- Khairabari, P.S- Barpeta Road, Dist. Barpeta, is a "citizen" of India or a "foreigner" within the meaning of the expression 'foreigner' as defined U/S 2 (1) (a) the Foreigners' Act, 1946, who has entered India illegally from Bangladesh after the 25th March 1971?

Reasons and decision thereof:-

4. As per provision Under Section 9 of the Foreigners' Act, 1946, the burden lied upon O.P. to prove that he/she is not a Foreigner but a Citizen of India.

5. Heard argument, I have carefully gone through with the case record, the W/S as well as perused the Affidavit and the cross-examination and the documents submitted by O.P. during the course of evidence.

6. O.P submitted W/S with documents and adduced evidence by way of filling Affidavit. All together ten documents have been exhibited by O.P to substantiate his claim of being an Indian. Inter alia O.P stated that he was born at village Modhuakali, P.S.Athpara, Dist. Maimansingh East Pakistan. His father namely Mahendra Kumar Roy along with his family had entered India on 21-5-1964 due to communal disturbance in East Pakistan as refugee through Meghalaya border and get sheltered in Balat Refugee camp for a while and later they were shifted to Village Khirabar. Mouza Gobardhana. O.P further stated that his father had purchased land properties in the said village in the year 1965 through registered deed of sale. In the year 1970 O.P's father got the registration certificate of Indian citizenship by the Sub Divisional Officer, Barpeta. In the voter list of the year 1971 the name of O.P's parents and grandmother's name appeared as the

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resident of village Khirabari under 47 No, Sorbhog LAC. In the subsequent voters' lists' the name of his parents had appeared consistently. However a case had been registered against O.P's parents and the siblings of OP under IMDT Act but the Hon'ble IMDT court Barpeta declared them as Indian vide Order dated 06/7/1990 in IMDT Case No. 73/1990. Another case had also been registered against the father of O.P under Foreigners Act 1946 in the F.T. No.2, Barpeta . Vide Order dated 07/03/2009 in FT case no.802/2006 the Hon'ble Tribunal had passed order in favour of O.P's father.

7. Ext-A is the copy of the Relief and Rehabilitation certificate dated 22/5/1964, issued by the Deputy Commissioner U.K & J Hills, Shillong. In this document the name of Mahendra Kr. Roy, Madhaba bala Roy, Nipen Lal Roy, Palashi Rani Roy, Mohan Roy and Raj Lakhi Roy had been entered as the refugee in India on 21/5/1964 due to the insecurity of life and oppression by the majority community and Government of Pakistan.

8. Ext- B is the copy of the certified copy of the Jamabandi pertaining to village Nichuka. In this document at Sl. No. 16 Mahendra Kr, Roy's name had entered as the pattadar of land Kahirabari. Ext-C is the revenue receipt, Ext-D is the certificate of Registration of Mahendra Kr. Roy. Ext-E and Ext-F are the certified copy of voters' lists of the year 1971 and 1989. The entries of these documents reflected that Mahendra Kumar Roy son of Mahananda was inhabiting in village Khairabari under Sorbhog LAC. It is also evident from the documents such as the Jamabandi and revenue receipts that Mahendra Kumar Roy who was projected as the father of O.P was residing in the said village from the year 1966.

9. Ext-I had also establish that Mahendra Kumar Roy, S/o Mahananda Roy was declared not to be an illegal migrant within the meaning of Sec.3 (1)(C) of the IMDT Act. It is found that O.P had able to establish his linkage with the projected father namely Mahendra Kumar Roy through Ext-A, Ext-B, Ext-F and Ext-G.

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10. From the above discussion it is evident that O.P. had able to prove and establish his linkage with Mahendra Kumar Roy as his biological father by cogent and reliable evidence. The claim made in his pleading was substantiated by O.P. through the documents which are found to be reliable and genuine as well as trustworthy.

11. Nothing appeared from the case record to discard the cogent and reliable evidence tendered by O.P. The documents submitted and proved are found to be sufficient to hold that O.P.'s parents are Indian and O.P. is also an Indian by birth through the Indian parents. There is no ground to hold that O.P. had entered into India from the specific territory after 25th March, 1971. The claim of O.P. coupled with the documents found to be sufficient to opine that O.P. had adequately discharge her burden of proof and established her case that she is deemed to be an Indian Citizen by birth as per Section 6 A of the Foreigners' Tribunal Act, 1946.

OPINION

In view of the above findings and discussion, this Tribunal is of the opinion that the O.P. Mohan Roy, S/O:- Lt. Mohindra Roy, Vill:- Khairabari, P.S:- Barpeta Road, Dist:- Barpeta, Assam, is not a Foreigner/Illegal migrant of any stream. Hence, the reference case is answered in negative and in favour of the O.P.

Send a copy of this order to the Superintendent of Police (B), Barpeta and Deputy Commissioner, Barpeta for information and necessary action.

The reference case is thus disposed off, on contest, in terms of the above said opinion.

Dictated & corrected by me:

Sd/-
(B. Das)
Member,
Foreigners' Tribunal No: 6th,
Barpeta, Assam.

Order passed by :

sd/-
(B. Das)
Member,
Foreigners' Tribunal No: 6th,
Barpeta, Assam.

Dictation taken down by:-
Gitartha Kumar Das. (Typist)



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Foreigners' Tribunal
Barpeta

Memo no. FT/6th/B/MPR/2022/54/

dated May' 2022

Copy forwarded to:-

- i. The Superintendent of Police (B), Barpeta for favour of his kind information and necessary action.
- ii. The Election Officer cum Nodal Officer, Foreigners' Tribunal Barpeta for favour of your kind information and necessary action.

Sd/-

(B. Das)

Member,
Foreigners' Tribunal No: 6th,
Barpeta, Assam.



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