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BEFORE THE MEMBER, FOREIGNERS TRIBUNAL NO. 3, AT GOALPARA



Case No. FT (3)- GLP/1741/2022

Ref. F.T Case No-450/2009

STATE

VS

Md. Mujafar Hosen

S/O- Nayabulla Sk

Vill- Dharai Pt-I (Bazar)

P.S- Lakhipur

Dist. Goalpara (Assam)



[Signature]
Member
Foreigners Tribunal No. (3)
Goalpara

Present- Shri. R.K. Khakhalary, Member
Foreigners Tribunal No. 3, Goalpara (Assam)

Argument On: - 30-06-2022

Order Passed On: - 30-06-2022

For Union of India: - Advocate Mrs.M. K. Sharma.

For The Proceedee: - Advocate Mr. A. Mubarak.

Opinion/Order

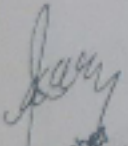


1. Originally this case was forward by the Superintendent of police (S.P. for short) Goalpara under the F.T. Case Vide reference Case No.450/2009 expressing doubt about the nationality of the opp. Party (o.p. for short) namely Mujafar Hosen, S/O-Nayabulla Sk as mentioned INTERROGATION REPORTON FOREIGN NATIONAL. (report of the inquiry officer) and Form No.I,II&III of Vill-Dharai Pt-I (Bazar), P.S-Lakhipur, Dist-Goalpara with a prayer to decide as to whether the proceedee is illegal migrant, as they were Suspected to be national of Bangladesh and to have entered in to India after 25-03-1971, subsequently, this case was transferred to this Tribunal for decision as per provision of Foreigner's Act 1946.

2. It appeared from the record that initially, notice was issued in the names of Mujafar Hosen to show cause as to why he should not be declared as Foreigners under the Foreigner's Act 1946. On the receipt of the notice, the proceedee appeared and filed written Statement along with copies of relevant documents. The Proceedee himself to be citizen of India by birth. There after he appeared and submitted evidence on affidavit along with certain documents relied upon Support version.

Now, the point for determination is as to whether proceedee is citizen of India or foreigners within the meaning of the expression Foreigner as defined in the foreigner's Act 1946.

3. As per provision of the section 9 of the foreigner's act 1946, the Onus of providing that the Suspects (The OPS in instant case) is citizen and not foreigners' lie upon the Suspects (The OPS) not with standing anything contained in the Indian Evidence Act 1872 (1 of 1872) Now let us find out as to how the proceedee could discharge their burden to proved that he is not foreigner.


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4. I have gone through the evidence on affidavit filed by. The OP as well as the document evidence on record carefully. On perusal of the affidavit the proceedee age is 63 yrs. By religion Islam, is Indian citizen by birth.

5. That the proceedee deposed that his grand-parent's name were Lt.Ghar Bhanga Sheikh and Lt.Kapashi and parent's name is Lt.Naib Ulla@Naib Ulla Sheikh@Naib Uddin Sheikh and Sunder Bhan Bewa. That his parent's name has been recorded in the voter list of 1960 of Vill-Chotokolia under P/S-South Salmara, Vide Sl.No.114&115 and House No.26 under South Salmara LAC. That his mother's name has been recorded in the voter list of 1966&1970 of Vill-Chotokolia Pt-I under P/S-South Salmara under South Salmara LAC/32.

6. That he was born and brought up at Vill- Chotokolia Pt-I under P/S-South Salmara, Dist-then Goalpara, Assam. Proceedee married to Amesa Khatun of Vill-Dharai under P/S-Lakhipur. Proceedee read up to Class VII at Vill-Fakirganj M.E. School. His father was a voter of 1960 at Vill- Chotokolia. Accordingly his name along with wife name has been recorded in the voter list of 1979,1985,1997,2005,2015&2021 of Vill-Dharai under P/S-Lakhipur under Jaleswar LAC/39.

7. That the proceedee has produced a D.W.2, namely Shahjalal Sheikh,S/O-Lt.Naibullah of Vill-Dharai under P/S-Lakhipur, Dist-Goalpara, Assam. That the proceedee is his own brother. Proceedee married to Amesa Khatun and she has 5 children namely, Azijul, Muktarul,Nuralom,Musika and Mustafizur. It is not fact that the proceedee is foreigner and came from Bangladesh after 1971.


8. In Support of the aforesaid Contentions, the OPs have submitted Certified copy of voter list in the year of 1960,1966,1970, 1979,1985,1997,2005,2015&2021 along with Land documents.

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- I. Ex-"A" Certified copy of voter list in the year of 1960 in the name of proceedee's father Naib Uddin Sheikh, S/O-Gharbhanga of Vill-Chotokolia under P/S-South Salmara, Vide Sl.No.114 and House No.26 under South Salmara LAC.
- II. Ex-"B" Original copy of final Khatian in the name of Proceedee's father Naibulla Sheikh, S/O-Lt.Gharbhanga of Vill- Chotokolia Pt-III under P/S-South Salmara which was issued by the Munsiff Court, Dhubri dated on 31-01-1966.
- III. Ex-"C" Original copy of final Khatian in the name of Proceedee's father Naibulla Sheikh, S/O-Lt.Gharbhanga of Vill-Morakuchi Pt-I under P/S-South Salmara dated on 26-10-1962.
- IV. Ex-"D" Certified copy of voter list in the year of 1966 in the name of proceedee's mother Sunderbhan Bewa W/O-Naib Ullah of Vill-Chotokolia Pt-I under P/S-South Salmara, Vide Sl.No.409 and House No.169 under South Salmara LAC/32.
- V. Ex-"E" Certified copy of voter list in the year of 1970 in the name of proceedee's mother Sunderbhan Bewa W/O-Naib Ullah of Vill-Chotokolia Pt-I under P/S-South Salmara, Vide Sl.No.417 and House No.129 under South Salmara LAC/32.
- VI. Ex-"F" Digital Certified copy of voter list in the year of 1979 in the name of proceedee Mosharaf Hosen, S/O-Naibulla of Vill-Dharai under P/S-Lakhipur, Vide Sl.No.8 and House No.5 under Jaleswar LAC/39.


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VII. Ex-"G" Digital Certified copy of voter list in the year of 1985 in the name of proceedee Mozafar Ali, S/O-Naibulla of Vill-Dharai under P/S-Lakhipur, Vide Sl.No.176 and House No.5 under Jaleswar LAC/39.

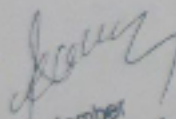
VIII. Ex-"H" Digital Certified copy of voter list in the year of 1997 in the name of proceedee Mozafar Hosen, S/O-Naibulla of Vill-Dharai under P/S-Lakhipur, Vide Sl.No.582 and House No.134 under Jaleswar LAC/39.

IX. Ex-"I" Certified copy of voter list in the year of 2005 in the name of proceedee Mozafar Hosen, S/O-Naibulla of Vill-Dharai under P/S-Lakhipur, Vide Sl.No.28 and House No.134 under Jaleswar LAC/39.

X. Ex-"K" Certified copy of voter list in the year of 2015 in the name of proceedee Mozafar Hosen, S/O-Naibulla of Vill-Dharai under P/S-Lakhipur, Vide Sl.No.39 and House No.134 under Jaleswar LAC/39.

XI. Ex-"L" Certified copy of voter list in the year of 2021 in the name of proceedee Mozafar Hosen, S/O-Naib Uddin Sheikh of Vill-Dharai under P/S-Lakhipur, Vide Sl.No.48 and House No.134 under Jaleswar LAC/39.

XII. Ex-"M" Original copy of T.C. in the name of Proceedee Md.Mozafar Hussain, S/O-Nayeb Uddin of Vill-Chotokolia under P/S-South Salmara which was issued by the Head Master of Fakirganj M.V. School and Countersigned by B.E.O, South Salmara dated on 23-05-2022.


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9. That the proceedee's grand-parent's name were Lt.Ghar Bhangra Sheikh and Lt.Kapashi and parent's name is Lt.Naib Ulla @Naib Ulla Sheikh@Naib Uddin Sheikh and Sunder Bhan Bewa. That his parent's name has been recorded in the voter list of 1960 of Vill-Chotokolia under P/S-South Salmara, Vide Sl.No.114&115 and House No.26 under South Salmara LAC. That his mother's name has been recorded in the voter list of 1966&1970 of Vill-Chotokolia Pt-I under P/S-South Salmara under South Salmara LAC/32.

10. That he was born and brought up at Vill- Chotokolia Pt-I under P/S-South Salmara, Dist-then Goalpara, Assam. Proceedee married to Amesa Khatun of Vill-Dharai under P/S-Lakhipur. Proceedee read up to Class VII at Vill-Fakirganj M.E. School. His father was a voter of 1960 at Vill- Chotokolia. Accordingly his name along with wife name has been recorded in the voter list of 1979,1985,1997,2005,2015&2021 of Vill-Dharai under P/S-Lakhipur under Jaleswar LAC/39.

11. Therefore as for as Mujafar Hosen, S/O-Nayabulla Sk has discharged his burden. He proved that his father's name is Lt.Naib Ulla @Naib Ulla Sheikh@Naib Uddin Sheikh and he entered in Assam before 1960 from adduced documents by proceedee it is seen that these documents are all related to before 1960. I am considered opinion for the reason and discussion above that he has discharged his burden as per provision of Sec. 9 of Foreigner Act. 1946 and he proved that he is Indian citizen. He has proved that he is not foreigner. The reference has answered in negative.

12. Considering the entire material on record and discussion above, I am of the considered opinion that the evidence of OPS proved the proceedee Mujafar Hosen@Mojaffar Hosen is not foreigner as such; he acquired citizenship of India by birth. The case is decided accordingly. Thus the reference is disposed on contest.

J. C. S.
Member
Foreigners Tribunal - (3)
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The Opinion and Order passed on 30th day of June/2022. Dictated and Corrected by me. *[Signature]*

1. Inform to Superintendent of Police (B) Goalpara, along with order copy.
2. Inform to District Magistrate Goalpara, along with order copy.

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R.K.Khakhary
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