

BEFORE THE MEMBER,
FOREIGNERS TRIBUNAL -10TH DHUBRI

Case No. FT-10/AGM/2143/2020.

E.T. Case No. 8108/GKJ/11 (old).

{Reference: IM(D)T Case No. 967/02}.

State of Assam

..... Referral Authority

-Versus-

Mosstt. Molina Bibi @ Mosstt. Malina Bibi

Wife of Sader Ali



..... Opposite Party

Date of Order : 24/01/2024.

Appearance:

For the Referral Authority: Ms. Sangita Koeri, Asstt. Govt. Pleader.

For the opposite party : Mr. Iskendar Azad,
Mr. R. Chakraborty, Advocates.



PRESENT:

Rafiqul Islam, Member



ORDER

24/01/2024

1) The instant reference was originally made in the year 2002 under the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 by the Superintendent of Police (B), Dhubri against the opposite party Mosstt. Molina Bibi @ Mosstt. Malina Bibi, Wife of Sader Ali, Vill:-Ramraikuti Part-I, P.S:-Golakganj (now Agomoni), Dist:-Dhubri (Assam) suspecting her to be an illegal migrant. Initially the reference was made to the IM(D)T, Dhubri in the year 2004 and subsequently, the said reference was transferred to the Foreigners Tribunal No.2, Dhubri to answer the reference as per the provisions of the Foreigners Act, 1946, the Rules framed there under and the procedure prescribed under the Foreigners (Tribunals) Order, 1964, as amended in view of the judgment of the Hon'ble Apex Court as reported in 2005(5) SCC 665. Again, upon constitution of this additional Foreigners Tribunal, the reference was transferred to this Tribunal for disposal.

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2) The reference is that the opposite party illegally entered into India from Village:-Bahalguri, P.S:-Bhurungamari, Dist:-Rangpur, Country:-Bangladesh after 25/03/1971 for livelihood without any valid document through Jhowkuti border of West Bengal and has been staying in a plot of khas land at Village:-Ramraikuti Part-I, P.S:-Golakganj with her husband and during enquiry, the opposite party could not produce any documentary evidence in support of her Indian citizenship, though she claimed to be an Indian Citizen. As the nationality of the opposite party could not be ascertained by the competent authority and she was suspected to be an illegal migrant, the reference was made accordingly.

3) Notice issued to the opposite party was duly served and on receipt of the notice, the opposite party entered appearance and filed written statement along with certain documents claiming to be an Indian citizen by birth and denying the allegations brought against her.

4) Opposite party filed written statement inter-alia stating that she is a citizen of India by birth. She was born on 01/01/1971 at Village:-Balabhut, P.O:-Tufanganj, District:-Coochbehar (West Bengal). Her father and grandfather were also citizens of India by birth and they were residents of Village:-Balabhut, P.O:-Balabhut, P.S:-Tufanganj, District:-Coochbehar (West Bengal) and they had voting rights and immovable properties thereon since before 1966. Her grandfather's name is Kalimuddin Sk. @ Sk. Falimuddin, own grandmother's name is Mohijan, step grandmother's name is Rahima Bibi, father's name is Mokbul Hussain @ Sk. Mokbul Hussain and mother's name is Jayda Bibi. She has altogether 6 brothers and sisters including herself viz, i) Molina Bibi @ Malina Bibi (opposite party), ii) Hasina Bibi, iii) Moymuna Bibi, iv) Jahangir Hussain Miah, v) Sahangir Hussain Miah and vi) Alomgir Hussain. She got married to one Sader Ali, S/o-Late Bhutu Sheikh of Village:-Ramraikuti Part-I, P.O:-Satrasal, P.S:-Agomani, Sub-Division:-Dhubri (Assam) and during their conjugal life 1 son was born out of their wed-lock viz, Ainul Hoque. Her grandfather's name entered in the voter lists of 1966, 1971 and 1983 with her step grandmother, parents and paternal uncle Sk. Abul Hussain at Village:-Purba Balabhut. Her father's name entered in the voter list of 1993 with her paternal uncle Hussain Khairul, in the voter list 2001 with her mother and in the voter list 2016 with her mother and brothers at Village:-Balabhut (Part). After marriage, her name entered in the voter list of 1985 with her husband and in-laws at Village:-Ramraikuti, in the voter lists of 1997 with her husband, in the voter list of 2010 with her husband and son Ainul Hoque and in the voter list of 2022 with her husband, son Ainul Hoque at Village:-Ramraikuti Part-I. Her grandfather purchased a plot of land by executing a registered Sale Deed vide Deed No. 11317 of 1963. Her father died on 18/08/2017 at Village:-Balabhut. She has been regularly casting her vote till date at Village:-Ramraikuti Part-I.

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5) Now, the main point for determination in the reference is whether the opposite party is a foreigner within the meaning of the expression 'foreigner' as defined in the Foreigners Act, 1946?

6) Opposite party examined herself as DW-1, mother of the opposite party as D.W-2 and the official witness as D.W-3 and exhibited some documents in support of her claim. None was examined for the Referral Authority.

7) Heard the arguments advanced on behalf of the parties. I have gone through the materials on record as submitted by the Referral Authority at the time of making the reference and the written statement as well as the oral and documentary evidence of the opposite party.

8) Opposite party as DW-1 filed evidence-in-chief on affidavit stating more or less the same thing as narrated in the written statement and exhibited certain documents in support of her Indian citizenship and opposite party was subjected to cross examination. Opposite party exhibited the following documents in support of her Indian citizenship:

- 1) Certified copy of voter list of 1966 of Sk. Falimuddin, Bibi Rohima, Sk. Mokbul Hussain, Sk. Abul Hussain and Bibi Jayda under 8 No. Tufanganj (Topsil) Assembly Constituency at Village:-Pub Balabhut as **Ext:A**.
- 2) Copy of voter list of 1971 of Sk. Falimuddin, Bibi Rohima, Sk. Mokbul Hussain, Sk. Abul Hussain and Bibi Jayda under Tufanganj (Topsil) Assembly Constituency at Village:-Pub Balabhut as **Ext:B**.
- 3) Copy of voter list of 1983 of Sk. Falimuddin, Bibi Rohima, Sk. Mokbul Hussain, Sk. Abul Hussain and Bibi Jayda under Tufanganj (Topsil) Assembly Constituency at Village:-Pub Balabhut as **Ext:C**.
- 4) Copy of voter list of 1993 of Hussain Mokbul and Hussain Khairul under 9 No. Tufanganj (Topsil) Assembly Constituency at Village:-Balabhut (Part) as **Ext:D**.
- 5) Copy of voter list of 2001 of Hussain Mokbul and Jabeda Bibi under 9 No. Tufanganj (Topsili Jati) Assembly Constituency at Village:-Balabhut (Part) as **Ext:E**.
- 6) Certified copy of voter list of 1985 of the opposite party with her husband under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti as **Ext:F**.
- 7) Certified copy of voter list of 1997 of the opposite party with her husband under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I as **Ext:G**.

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- 8) Certified copy of voter list of 2010 of the opposite party with her husband and son Ainul Hoque under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I as Ext:H.
- 9) Certified copy of voter list of 2022 of the opposite party with her husband, son Ainul Hoque under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I as Ext:I.
- 10) Copy of registered Sale Deed vide Deed No. 11317 of 1963 in the name of Kalimuddin Sk. as Ext:J (Proved in original).
- 11) Copy of Death Certificate dated 31/08/2017 issued from office of the Balabhut Gram Panchayat in the name of Makbul Hosen as Ext:K.
- 12) Copy of Elector Photo Identity Card vide No. in the name of opposite party as Ext:L (Proved in original).
- 13) Copy of PAN card vide in the name of opposite party as Ext:M (Proved in original).
- 14) Copy of Bank Passbook of Assam Gramin Vikash Bank vide A/C No. in the name of opposite party as Ext:N.
- 15) Copy of linkage certificate dated 12/09/2022 issued by the Secretary, Satrasal Gaon Panchayat in the name of opposite party as Ext:O (Proved in original).
- 16) Copy of linkage certificate dated 06/09/2022 issued by the Pradhan, Balabhut Gaon Panchayat in the name of opposite party as Ext:P (Proved in original).

9) DW-2, Jayda Bibi, mother of the opposite party, filed evidence-in-chief on affidavit and in her is evidence-in-chief she supported the evidence of DW-1 and deposed almost the same thing as deposed by the opposite party and exhibited her Voter Identity Card vide No. as Ext:Q. In her cross-examination, she deposed that she was born at Village:-Balabhut and she has 3 sons and 4 daughters and opposite party is her eldest daughter. She deposed that all of her children were born at Village:-Balabhut and opposite party got married to Sader Ali of Village:-Ramraikuti Part-I and opposite party still residing at Village:-Ramraikuti Part-I with her husband. She further deposed that she is a regular voter.

10) D.W-3 deposed that he is the Gram Pradhan of Balabhut Gram Panchayat and he has been elected as the Pradhan of Balabhut Gram Panchayat on 28/07/2023 for the term 2023 to 2028 and exhibited the communication issued by the prescribed authority and B.D.O, Tufanganj-I Development Block as Ext:1. He deposed that Ext:P certificate was issued by the earlier Pradhan of the Balabhut Gram Panchayat on 06/09/2022 in the name of Malina Khatun, D/o-Late Makbul Hussain of Village:-

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Balabhut, P.S:-Tufanganj to the effect that Malina Khatun got married to Sader Ali, S/o-Bhutu Sk. of Village:-Ramraikuti Part-I, P.S:-Agomani. He deposed that one Alomgir Hussain claiming him to be the brother of the Malina Khatun submitted an application praying for a linkage certificate on 02/09/2022 and said application was recommended by one Samsul Hoque Choudhury, earlier Member of Balabhut Gram Panchayat, Tufanganj-I Block and on the basis of recommendation of Member, the certificate dated 06/09/2022 was issued. DW-3 produced the original application submitted for the purpose and also produced the duplicate copy of the certificate along with the issue register of the certificate and exhibited the duplicate copy of Ext:P certificate as Ext:2. In cross examination, he deposed that he had not issued the Ext:P certificate. He admitted that the certificate was issued by the earlier Pradhan of Balabhut Gram Panchayat and in the certificate it was certified that father's name of Malina Khatun was included in Part No. 106 and Sl. No. 181 of year 1966 voter list but there is no any mention about the inclusion of name of father in the application as well as in the recommendation of the Member.

11) Now let us appreciate the evidence of DWs including the documents exhibited in the case to determine the nationality status of the opposite party. It appears from Ext:A certified copy of voter list that the names of Sk. Falimuddin, Bibi Rohima, Sk. Mokbul Hussain, Sk. Abul Hussain and Bibi Jayda, whom the opposite party has projected to be her grandfather, step grandmother, father, uncle and mother respectively, were entered in the voter list of 1966 under 8 No. Tufanganj (Topsil) Assembly Constituency at Village:-Pub Balabhut. Though opposite party has exhibited the copies of voter lists of 1971 and 1983 of Sk. Falimuddin, Bibi Rohima, Sk. Mokbul Hussain, Sk. Abul Hussain and Bibi Jayda claiming them to be her grandfather, step grandmother, father, uncle and mother respectively as Ext:B and Ext:C, opposite party has failed to produce the certified copies of the said voter lists. Therefore Ext:B and Ext:C voter lists are not accepted to be trustworthy piece of documents in absence of proof. Similarly though opposite party has exhibited the copy of voter list of 1993 of Hussain Mokbul claiming him to be her father as Ext:D, opposite party has failed to produce the certified copy of the said voter list. Opposite party has exhibited the copy of voter list of 2001 of Hussain Mokbul and Jabeda Bibi claiming them to be her father and mother as Ext:E, opposite party has failed to produce the certified copy of the said voter list. Therefore Ext:D and Ext:E voter lists are not accepted to be trustworthy piece of documents in absence of proof. It is the case of opposite party that she got married to one Sader Ali, S/o-Late Bhutu Sheikh of Village:-Ramraikuti Part-I, P.O:-Satrasal, P.S:-Agomani, Sub-Division:-Dhubri (Assam) and still residing at her matrimonial house and her name has been entered in the voter lists at Village:-Ramraikuti Part-I with her husband since the time of her marriage.

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It appears from Ext:F, Ext:G, Ext:H and Ext:I certified copies of voter lists that the name of opposite party has been entered in the voter lists of 1985, 1997, 2010 and 2022 at Village:-Ramraikuti/Ramraikuti Part-I with her husband under 25 No. Golakganj Legislative Assembly Constituency. Opposite party has exhibited a copy of registered sale deed No.11317 in the name of Kalimuddin Sk. claiming him to be her grandfather as Ext:J. It appears from Ext:J sale deed that the sale deed was registered on 19/11/1963 in the office of the Sub-Registrar, Tufanganj. On the prayer of the opposite party summon was issued to the Sub-Registrar, Tufanganj to prove the Ext:J sale deed. However, in response to the summon, the District Registrar, Coochbehar vide his letter dated 09/10/2023 informed the Tribunal that Sale deed No.11317 of 1963 registered in the ADSR, Tufanganj is not available in the office due to devastating fire that was occurred on 27/08/1974. Therefore the Ext:J sale deed is not proved. Ext:K death certificate of Makbul Hussain of Village:-Balabhut has no evidentiary value in absence of proof. It appears from Ext:L Elector Photo Identity Card No. GJF1105288 that voter card was issued in the year 2013 in the name of the opposite party being the voter of Village:-Ramraikuti Part-I under 25 No. Golakganj Legislative Assembly Constituency. Ext:M PAN card, Ext:N bank pass book and Ext:O certificate of opposite party have no evidentiary value in absence of proof. From Ext:P certificate issued by the Pradhan, Balabhut Gram Panchayat it appears that the name of father of opposite party is Makbul Husen of Village:-Balabhut, P.S:-Tufanganj, District:-Coochbehar (West Bengal). It appears from the certificate (Ext:P) that opposite part got married to Sader Ali of Village:-Ramraikuti Part-I, P.S:-Agomoni, Dist:-Dhubri. To prove Ext:P certificate opposite party examined DW-3, who in his evidence deposed that that Ext:P certificate was issued by the earlier Pradhan of the Balabhut Gram Panchayat on 06/09/2022 in the name of Malina Khatun, D/o-Late Makbul Hussain of Village:-Balabhut, P.S:-Tufanganj to the effect that Malina Khatun got married to Sader Ali, S/o-Bhutu Sk. of Village:-Ramraikuti Part-I, P.S:-Agomani. He deposed that one Alomgir Hussain claiming him to be the brother of the Malina Khatun submitted an application praying for a linkage certificate on 02/09/2022 and said application was recommended by one Samsul Hoque Choudhury, earlier Member of Balabhut Gram Panchayat, Tufanganj-I Block and on the basis of recommendation of Member, the certificate dated 06/09/2022 was issued. DW-3 produced the original application submitted for the purpose and also produced the duplicate copy of the certificate along with the issue register of the certificate and exhibited the duplicate copy of Ext:P certificate as Ext:2. DW-2, mother of opposite party, in her evidence, has supported and corroborated the evidence of DW-1, the opposite party. Though by producing Ext:A certified copy of voter list opposite party has claimed that the name of her mother was entered in the voter list of 1966 with her father, it appears from Ext:Q that DW-2 was born in the year 1969 and her husband's name is Makbul Husen Miya.

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It is not understood as to how the name of a person was enrolled in the voter list of 1966 who born in the year 1969. Therefore the testimony of DW-2 is disbelieved.

12) From the evidence on record and finding **no** rebuttal evidence, there is no reason to disbelieve the testimony of the opposite party and documents exhibited by the opposite party in support of her testimony. Since the name of the father of the opposite party was entered in the voter list of 1966 (Ext:A) at Village:-Pub Balabhut, father of the opposite party was residing at Village:-Pub Balabhut since before 01/01/1966, the evidence of the opposite party are sufficient enough to prove that the father of the opposite party was a citizen of India. As the father of the opposite party was residing in India since before 01/01/1966 and the opposite party was born to Indian parents in Indian soil, being the descendant of citizen of India, the opposite party is a citizen of India. Moreover, though the instant reference was registered in the year 2002, the name of opposite party has been entered in the voter lists at Village:-Ramraikuti/ Ramraikui Part-I since the year 1985 to till date and has been regularly casting her vote and Elector Photo Identity Card No. GJF1105288 was issued in the year 2013 in the name of the opposite party being the voter of Village:-Ramraikuti Part-I. The linkage of the opposite party with her father has been established from Ext:P and therefore the opposite party cannot be termed as a foreigner as suspected by the referral authority.

13) For the aforesaid reasons and discussions, the evidence and documents examined by opposite party in support of the case are found to be sufficient and trustworthy to prove that the opposite party is not a foreigner.

14) Considering the entire materials on record and the discussions above, I am of the considered opinion that the opposite party Mosstt. Molina Bibi @ Mosstt. Malina Bibi, Wife of Sader Ali, Vill:-Ramraikuti Part-I, P.S:-Agomani (earlier Golakganj), Dist:-Dhubri (Assam) is not foreigner.

15) The reference is answered in negative.

16) Intimate the Superintendent of Police (Border), Dhubri, the District Magistrate, Dhubri and the Election Officer, Dhubri along with a copy of the order.

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