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11.01.2024	12.01.2024	12.01.2024	17.01.2024	17.01.2024

**BEFORE THE MEMBER,
FOREIGNERS TRIBUNAL -10TH DHUBRI**

Case No. FT-10/AGM/2137/2020.

{F.T. Case No. 8034/GKJ/11 (old)}.

Reference: IM(D)T Case No. 966/2002.

State of Assam

-Versus-

Md. Sader Ali @ Sader Ali

Son of Late Bhutu Sk. @ Bhutu Sk.

..... Referral Authority



..... Opposite Party

Date of Order

: 28/12/2023

Appearance:

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

For the opposite party : Mr. Iskandar Azad, Advocate.

PRESENT:

Rafiqul Islam, Member

ORDER

28/12/2023

1) The instant reference was originally made under the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 by the Superintendent of Police (R) Dhubri against the opposite party Md. Sader Ali @ Sader Ali, Son of Late Bhutu Sk.

(Assam) suspecting him 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.

2) The reference is that the opposite party illegally entered into India from

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

3) Notice was issued to the opposite party and responding the notice 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 him. According to the opposite party he was born on 01/01/1962 at Village: Ramraikuti Part-I, P.S: Agomani, District: Dhubri (earlier Goalpara), Assam. His father and grandfather were citizens of India by birth and a residents of Village: Ramraikuti Part-I, P.S: Agomani, District: Dhubri (earlier Goalpara), Assam. His grandfather's name is Bashak @ Bashak Sk. @ Bashak Sarkar, grandmother's name is Tepri, father's name is Bhutu Sk. His father has altogether 7 brothers and sisters including his father, viz, i) Bhutu Sk., ii) Putu Sk., iii) Joleya Sk. iv) Muturu Sk., v) Tengna Sk., vi) Bhodeya Sk. and vii) Godda Sk. His father had 2 wives viz, i) Momina Bibi @ Momena Khatun Bibi @ Tetla Bibi (opposite party's own mother) and ii) Asiran Bibi (opposite party's stepmother). He has altogether 10 brothers and sisters viz, i) Aleya Bewa, ii) Md. Mojam Ali @ Mozam Ali @ Mojam Sheikh, iii) Md. Sader Ali @ Sader Ali (opposite party), iv) Mafijul Rahman, v) Mehena Bibi, vi) Hamida Bibi, vii) Anowara Bibi, viii) Manowara Bibi, ix) Sami Bibi @ Samida Bibi and x) Sahera Bibi @ Saira. His father's name entered in the NRC of 1951 at Village: Satrasal Ramraikuti along with his own mother Tetla Bibi. His father's name entered in the voter lists of 1958 along with his own mother and stepmother, 1966 along with his own mother and stepmother, 1970 along with his own mother, 1985 along with him, his own mother, brother and wife and 1997 along with his own mother and brother at Village: Ramraikuti. His name entered in the voter lists of 1997 along with his wife and 2010 along with his wife and son at Village: Ramraikuti Part-I. His father was serving as Chowkidar under Satrasal Gaon Panchayat, Satrasal and at the time of death of his father, his father left Rs. 54, 677/- in the said Gaon Panchayat as arrear pay, leave salary etc. His father was the owner and pattadar of a plot of a land measuring 0B-4K-15L covered by Dag No. 40, Myadi Khiraj Patta No. 145, land situated at Village: Ramraikuti Part-I. His father and others have sold a plot of land to one Md. Masur Ali Sk., S/o-Late Haji Madhu Sk. of Village: Jhawkuti, P.S & Sub-Registry: Tufanganj, District: Coochbehar (West Bengal) executing a registered Sale Deed vide Deed No. 1194 of 1975. His father was a student of 948 No. Satrasal J.B. School.

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4) 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?

5) Opposite party examined himself as DW-1, uncle of the opposite party as D.W-2 and official witnesses as D.W-3 and D.W-4 and exhibited some documents in support of his claim. None was examined for the Referral Authority.

6) 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.

7) 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 his Indian citizenship and opposite party was subjected to cross examination. In cross examination he deposed that he has been casting his vote regularly and a reference case is pending in this Tribunal against his brother Majam Sk.

8) Opposite party exhibited the following documents in support of his Indian citizenship:

- 1) Certified copy of voter list of 1958 of Bhutu Sk., Momina Bibi and Asiran Bibi under 35 No. Golakganj LAC at Village:-Ramraikuti as **Ext:A.**
- 2) Certified copy of voter list of 1966 of Bhutu Sk., Momina Khatun Bibi and Asiran Bibi under 35 No. Golakganj LAC at Village:-Ramraikuti Part-I as **Ext:B.**
- 3) Copy of RTI reply copy dated 14/11/2022 issued by the Election Officer, Dhubri as **Ext:C.**
- 4) Certified copy of voter list of 1985 of Bhutu Sk. and Mamina Bibi under 25 No. Golakganj LAC at Village:-Ramraikuti as **Ext:D.**
- 5) Certified copy of voter list of 1997 of Bhutu Sk. and Momina Bibi under 25 No. Golakganj LAC at Village:-Ramraikuti Part-I as **Ext:E.**
- 6) Certified copy of voter list of 1997 of the opposite party under 25 No. Golakganj LAC at Village:-Ramraikuti Part-I as **Ext:F.**
- 7) Certified copy of voter list of 2010 of the opposite party under 25 No. Golakganj LAC at Village:-Ramraikuti Part-I as **Ext:G.**
- 8) Copy of order dated 27/07/2001 passed by District and Sessions Judge, Dhubri passed in Misc (S/C) Case No. 2 of 2001 in the name of opposite party and his brothers and sisters as **Ext:H** (Proved in original).

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- 9) Copy of registered Sale Deed No. 1194 in the name of Bhutu Sk. and others as **Ext:I** (Proved in original).
- 10) Copy of Elector Photo Identity Card No. GIF1105277 in the name of opposite party as **Ext:J** (Proved in original).
- 11) Copy of PAN Card vide No. _____ in the name of opposite party as **Ext:K** (Proved in original).
- 12) Copy of _____ in the name of opposite party as **Ext: L** (Proved in original).
- 13) Copy of linkage certificate dated 12/09/2022 issued by the Secretary, Satrasal Gaon Panchayat in the name of opposite party as **Ext:M** (Proved in original).
- 14) Copy of Income Certificate dated 05/11/2022 issued from office of the Circle Officer, Agomani in the name of opposite party as **Ext:N** (Proved in original).
- 15) Copy of Bank Pass Book of Assam Gramin Vikash Bank, Satrasal branch in the name of opposite party as **Ext:O** (Proved in original).

9) DW-2, Jaliluddin Sheikh, uncle of the opposite party, filed evidence-in-chief on affidavit and in his evidence-in-chief he supported the evidence of DW-1 and deposed almost the same thing as deposed by the opposite party and exhibited his Voter Identity Card **Ext:Q** (proved in original) and he was subjected to cross examination. D.W-2 deposed that his name entered in the voter list of 1989 along with opposite party's parents and brother Mofijul Rahman at Village:- Ramraikuti. In his cross-examination he deposed that he was born and brought up at Village:-Ramraikuti Part-I.

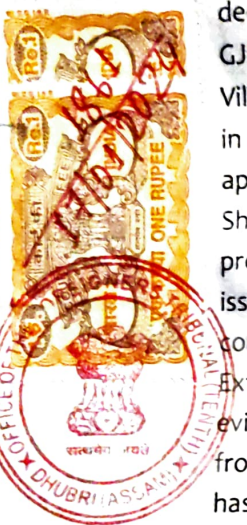
10) Now let us appreciate the evidences of DWs including the documents exhibited in the case to determine the nationality status of the opposite party. It appears from **Ext:A** and **Ext:B** certified copies of voter lists that the names of Bhutu Sk., Momena Khatun Bibi and Asiran Bibi, whom the opposite party has claimed to be his father, mother and stepmother, were entered in the voter lists of 1958 and 1966 under 35 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti/ Ramraikuti Part-I. It is the case of the opposite party that his parents' names also entered in the voter list of 1970 at Village:-Ramraikuti/ Ramraikuti Part-I but the authority concerned has failed to provide the certified copy and in support thereof opposite party exhibited the **Ext:C** communication of the Election Officer, Dhubri. It appears from **Ext:D** and **Ext:E** certified copies of voter lists that the names of Bhutu Sk. and Momena @ Mamina Bibi, whom the opposite party has claimed to be his parents, were entered in the voter lists of 1985 and 1997 under 35 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I. From **Ext:F** certified copy of voter list it appears that the name of opposite party has been entered in the

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voter list of 1997 under 25 No. Golakganj LAC at Village:-Ramraikuti Part-I, Part No.52, House No.18 with his wife and on the other hand Ext:E shows that the names of parents of opposite party were entered in the voter list of 1997 under 25 No. Golakganj LAC at Village:-Ramraikuti Part-I, Part No.52, House No.20. It appears from Ext:G certified copy of voter list that the name of opposite party has been entered in the voter list of 2010 under 25 No. Golakganj LAC at Village:-Ramraikuti Part-I, Part No.87, House No.18 with his wife. From Ext:H order dated 27/07/2001 passed by District and Sessions Judge, Dhubri passed in Misc (S/C) Case No. 2 of 2001 it appears that opposite party is one of the successors of Late Bhutu Sheikh of Village:-Ramraikuti Part-I. It appears from Ext:I registered deed that Bhutu Sheikh of Village:-Ramraikuti Part-I, whom the opposite party has claimed to be his father executed the deed on 20/01/1975. It appears from Ext:J that Elector Photo Identity Card No. GJF1105277 was issued in the name of opposite party in the year 2013 as the voter of Village:-Ramraikuti Part-I. Ext:K, Ext:L and Ext:O documents have no evidentiary value in absence of proof and hence no reliance can be placed on the said documents. It appears from Ext:M certificate that the name of father of opposite party is Bhutu Sheikh. To prove Ext:M certificate opposite party examined DW-4, who in his evidence produced the counterpart of Ext:M certificate and deposed that the certificate was issued by the earlier Secretary of the Satrasal Gaon Panchayat with the countersignature of the Block Development Officer, Agomoni Development Block. Ext:M is therefore proved and accepted to be trustworthy piece of documentary evidence. Ext:N income certificate has been proved by examining the DW-3. It appears from Ext:N that the name of father of opposite party is Bhutu Sheikh. Opposite party has examined his uncle as DW-2 in the case and DW-2, in his evidence has supported and corroborated the evidence of opposite party (DW-1). To prove the certified copies of exhibited voter lists, on the prayer of the opposite party, summon was issued to the Election Officer, Dhubri. In response to summon, the Election Officer, Dhubri vide his letter dated 28/09/2023 has sent the authenticated report of the exhibited voter lists duly signed by him. Therefore Ext:A, Ext:B, Ext:D, Ext:E, Ext:F and Ext:G certified copies of voter lists are accepted to be genuine and secondary evidence.

11) 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 his testimony. Since the names of parents of opposite party were entered in the voter lists of 1958, 1966, 1985 and 1997 (Ext:A, Ext:B, Ext:D and Ext:E) at Village:-Ramraikuti/Ramraikuti Part-I, the evidence of opposite party are sufficient enough to prove that the parents of opposite party were citizens of India. Since the names of parents of opposite party were entered in the voter lists of 1958, 1966, 1985 and 1997 (Ext:A, Ext:B, Ext:D and Ext:E) and the parents of the opposite party were residing in India (Assam) prior to the year 1966 and the opposite party was born to Indian parents in Indian soil, being the descendent of citizens of India, the

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opposite party is a citizen of India by birth. It appears that the name of opposite party has been entered in the voter list of 1997 and 2010 at Village:- Ramraikuti Part-I and opposite party is a regular voter. The linkage of father and opposite party has been established from Ext:F, Ext:G, Ext:H, Ext:M and Ext:N and the evidence of DW-2 and therefore the opposite party cannot be termed as a foreigner as suspected by the referral authority.

12) 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.

13) Considering the entire materials on record and the discussions above, I am of the considered opinion that the opposite party Md. Sader Ali @ Sader Ali, Son of Late Bhutu Sk. @ Bhutu Sk., Vill:-Ramraikuti Part-I, P.S:-Agomani (earlier Golakganj), Dist:-Dhubri (Assam) is not a foreigner.

14) The reference is answered in negative.

15) 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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