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

Case No. FT-10/AGM/2141/2020.
F.T. Case No. 8106/GKJ/11 (old).
 {Reference: IM(D)T Case No. 1014/02}.

State of Assam

..... Referral Authority

-Versus-
 Musstt. Saleya Bibi
 Wife of Majam Ali



. Opposite Party

Date of Order : 08/02/2024.

Appearance:

For the Referral Authority: Ms. Sangita Koeri, Asstt. Govt. Pleader.
 For the opposite party : Mr. Iskandar Azad,
 Mr. R. Chakraborty, Advocates.



PRESENT:

Rafiqul Islam, Member

ORDER

08/02/2024

1) The instant reference was originally made in the year 2003 under the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 by the Superintendent of Police (B), Dhubri against the opposite party Musstt. Saleya Bibi,

Disc-Dhubri (Assam) suspecting her to be an illegal immigrant made to the IM(D)T, Dhubri in the year 2004 and subsequently, 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:-Kachakata, P.S:-Nageswari, Dist:-Rangpur, Country:-Bangladesh after 25/03/1971 for livelihood without any valid document through Jhowkuti border of West Bengal and has been residing 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 01/01/1967 at Village:-Jhaskal Part-III, Police station:-Agomoni, District:-Dhubri (Assam). Her father and grandfather were also citizens of India by birth and they were residents of Village:-Jhaskal Part-III, Police station:-Agomoni, District:-Dhubri (Assam) and they had voting rights and immovable properties thereon since before 1951. Her grandfather's name is Fashu Sk. @ Fashu Ali Sk. @ Kamu Sk., grandmother's name is Sabiron Bewa @ Saburon Bewa, father's name is Sated Ali @ Sated Ali Sk. and mother's name is Joynob Bibi. She has altogether 5 (five) brothers and sisters including herself viz, i) Saleya Bibi (opposite party), ii) Johirul Sk., iii) Sami Bibi, iv) Sayera Bibi and v) Solema Bibi. She got married to one Mojam Sheikh, 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 2 (two) children were born out of their wed-lock viz, 1) Momota Khatun and Saidul Hoque. Her grandfather's name alongwith the names of her grandmother, uncle and father were recorded in the NRC, 1951 at Village:-Jhaskal. Her grandparents' names alongwith the names of her uncle and father were entered in the voter list of 1966 at Village:-Jhaskal Part-III, her grandparents' names entered in the voter lists of 1970 and 1979 at Village:-Jhaskal Part-III alongwith her parents and uncle. Her grandmother's name alongwith the names of her uncle and parents were entered in the voter list of 1985 at Village:-Jhaskal Part-III and her father's name was entered in the voter list of 1993 at Village:-Jhaskal Part-III and her father was a regular voter. After her marriage, her name has been entered in the voter lists of 1985, 1989, 1997, 2010 and 2022 at Village:-Ramraikuti Part-I with her husband and other family members and she is a regular voter.



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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, brother 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 Sabed Ali Sheikh under 35 No. Golakganj Legislative Assembly Constituency at Village:-Jhaskal Part-III as **Ext:A.**
- 2) Certified copy of voter list of 1970 of Fashu Ali Sheikh, Sobron Bibi, Ketu Sheikh, Sabed Ali Sheikh and Joynob Bibi under 35 No. Golakganj Legislative Assembly Constituency at Village:-Jhaskal Part-III as **Ext:B.**
- 3) Certified copy of voter list of 1979 of Kamu Sheikh, Sabiran Bibi, Sabed Ali, Joynab Bibi, Saydar Ali, Ambiya Bibi, Ayjan Bewa, Ketu Sheikh and Komiran Bibi under 25 No. Golakganj Legislative Assembly Constituency at Village:-Jhaskal Part-III as as **Ext:C.**

4) Photo Identity Card No. GJF1475076 in the name of Sabed

Saieya BIDI, Addul Saiey, m...
Golakganj Legislative Assembly Constituency at Village:-Ramraikuti as
Ext:G

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- 8) Certified copy of voter list of 1989 of Bhutu Sheikh, Mojammel Hoque, Saleya Bibi, Abdul Sader, Malina Bibi and Mamina Bibi under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti as Ext:G
- 9) Certified copy of voter list of 1985 of Mojam Sk. and Saleya Bibi under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I as Ext:H
- 10) Certified copy of voter list of 1989 of Mojam Sk. and Saleya Bibi under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I as Ext:I
- 11) Certified copy of voter list of 2010 of Mojam Sk., Saleya Bibi and Saidul Hoque under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I as Ext:J
- 12) Certified copy of voter list of 2010 of Mojam Sk., Saleya Bibi and Saidul Hoque under 25 No. Golakganj Legislative Assembly Constituency at Village:-Ramraikuti Part-I as Ext:K



9) DW-2, Jahirul Hoque, brother 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 Elector Photo Identity Card vide No. GJF1475098 as Ext:R, PAN card No. BFWPH079&L as Ext:S and a certified copy of voter list of 2021 in his name with his father at Village:-Jhaskal Part-III as Ext:T. In her cross-examination, he deposed that he is the only son of his parents and opposite party is his elder sister and opposite party got married to Mojam sk. of Village:-Ramraikuti Part-I and opposite party still residing at Village:-Ramraikuti Part-I with her husband.

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10) D.W-3 deposed that he is the Secretary of Satrasal Gaon Panchayat and he has been working in the said Panchayat since 14/08/2023 on being transferred from Aolatali Gaon Panchayat under Lakhipur Development Block. He deposed that Ext:O certificate was issued by the earlier Secretary of Satrasal Gaon Panchayat on 09/07/2015 in the name of Saleya Bibi, D/o- Sabed Ali of Village:-Jhaskal part-III and produced the counterpart of the certificate and the original application submitted by Sabeya Bibi and exhibited the copy of application submitted by Sabeya Bibi as Ext:O (i). In cross examination, he deposed that he had not issued the Ext:O certificate. He admitted that the certificate was issued by the earlier Secretary of Satrasal Gaon Panchayat and that nothing is available to show that the certificate was issued after due verification.

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 name of Sabed Ali Sheikh, whom the opposite party has claimed to be her father, was entered in the voter list of 1966 under 35 No. Golakganj Legislative Assembly Constituency at Village:-Jhaskal Part-III. From Ext:B and Ext:C certified copies of voter lists it appears that the names of Sabed Ali Sheikh and Joynob Bibi, whom the opposite party has claimed to be her parents, were entered in the voter lists of 1970 and 1985 under 35/25 No. Golakganj Legislative Assembly Constituency at Village:-Jhaskal Part-III. Ext:D, Ext:E and Ext:F are the Elector Photo Identity Card, PAN Card and AADHAR Card in the name of Sabed Ali, whom the opposite party has claimed to be her father. It is the case of opposite party that she got married to one Mojam Sheikh, 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. It appears from Ext:G certified copy of voter list that her name was entered in the voter list of 1985 with Bhutu Sheikh and Mojammel Hoque, whom the opposite party has claimed to be her father-in-law and husband respectively, at Village:-Ramraikuti under 25 No. Golakganj Legislative Assembly Constituency. It is the case of the opposite party that her husband's name is Mojam Sk. but in the voter list of 1985 her husband's name was recorded as Mojammel Hoque. It appears from Ext:h, Ext:i, Ext:j and Ext:k certified copies of voter lists that the name of opposite party has been entered in the voter lists of 1989, 1997, 2010 and 2022 at Village:-Ramraikuti Part-I under 25 No No. Golakganj Legislative Assembly Constituency with her husband Mojam Sk. Ext:L, Ext:M and Ext:N are the Elector Photo Identity Card, PAN Card and AADHAR Card of the opposite party. It appears from Ext:L that though the reference was instituted in the year 2003 Elector Photo Identity card was issued in her name in the year 2013 being the voter of Village:-

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Ramraikuti Part-I under 25 No. Golakganj Legislative Assembly Constituency. From Ext:O certificate issued by the Secretary of Satrasal Gaon Panchayat It appears that the name of father of opposite party is Sabed Ali of Village:-Jhaskal Part-III. It appears from the certificate (Ext:O) that opposite part got married to Mojam Sk. of Village:-Ramraikuti Part-I, P.S:-Agomoni, Dist:-Dhubri. To prove Ext:O certificate opposite party examined DW-3, who in his evidence deposed that that Ext:O certificate was issued by the earlier Secretary of the Panchayat in the name of Saleya Bibi, D/o- Sabed Ali of Village:-Jhaskal part-III and produced the counterpart of the certificate and the original application submitted by Sabeya Bibi and exhibited the copy of application submitted by Sabeya Bibi as Ext:O (i). Ext:O is therefore proved and accepted to be a linkage document. Ext:P bank pass book and Ext:Q e-SHRAM card of opposite party have no evidentiary value in absence of proof. DW-2 brother of opposite party, in his evidence, has supported and corroborated the evidence of DW-1, the opposite party. DW.2 exhibited his Elector Photo Identity Card vide No. GJF1475098 as Ext:R, PAN card No. BFWPH0798L as Ext:S and a certified copy of voter list of 2021 in his name with his father at Village:-Jhaskal Part-III as Ext:T and therefore there is no reason to disbelieve the testimony of DW-2. In order to prove Ext:A, Ext:B, Ext:C, Ext:G, Ext:H, Ext:I, Ext:J, Ext:K and Ext:T, on the prayer of the opposite party summon was issued to the Election Officer, Dhubri and on receipt of summon the Election Officer, Dhubri vide his letter dated 10/01/2024 had submitted a authenticated report regarding issuance of the respective certified copies of voter lists from their end. Therefore the exhibited certified copies of voter lists are accepted to be genuine and secondary evidence.

(2) 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:-Jhaskal Part-III, names of parents of opposite party were entered in the voter lists of 1970 and 1979 at Village:-Jhaskal Part-III, name of father of opposite party was entered in the voter list of 2021 at Village:-Jhaskal Part-III and was residing at Village:-Jhaskal Part-III 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 (Assam) since before 01/01/1966 and the opposite party was born to Indian parents in Indian soil, being the descendant of citizens of India, the opposite party is a citizen of India. Moreover, though the instant reference was registered in the year 2003, 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. GJF1105313 was issued in the year 2013 in the name of the opposite party being the voter of

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Village:-Ramraikuti Part-I. The linkage of the opposite party with her father has been established from Ext:O and the evidence of DW-2 and therefore the opposite party cannot be termed as a foreigner/illegal migrant 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/illegal migrant.

14) Considering the entire materials on record and the discussions above, I am of the considered opinion that the opposite party Musstt. Saleya Bibi, Wife of Majam Ali, Village:-Ramraikuti Part-I, Police station:-Golakganj (now Agomoni), 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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