



BNGN/FT/3927/2009
(REF IM(D)T CASE NO/1405/2003
P R E S E N T
SHRI DULAL SAHA, MEMBER
FOREIGNERS' TRIBUNAL BONGAIGAON NO.1

STATE OF ASSAM

PETITIONER

-VRS-

BIPUL KARMAKAR @ BIKUL KARMAKAR,
S/O- LT. RAM KARMAKAR

APPEARANCE

ADVOCATE FOR THE STATE:-MR.DEBABRATA DAS (A.G.P.),
ADVOCATE FOR THE O.P.:-DEWAN ABDUR RAHIM & SAHIDUR
ROHMAN.

DATE OF EVIDENCE :- 01-09-2022, 14-03-2023 & 30-10-2023.

DATE OF ARGUMENT:-04-12-2023

DATE OF ORDER :-03-02-2024.

O R D E R

This is a reference made Under Rule 2(1) of the Foreigners (Tribunal) Order 1964, for rendering opinion as to whether Bipul Karmakar @ Bikul Karmakar, S/O- Lt. Ram Karmakar is a foreigner from specified territory, who entered in the state of Assam after 25th March 1971 or not?

Upon perusal of the notice, O.P appeared and contested the case by filing written statements, evidence-in-chief in the form of an Affidavit and relying on documents.

The gist of the written statement is that, the name of the O/P is Bikul Karmakar @ Bipul Karmakar, his father's name is Lt. Ram Karmakar @ Ram Chandra Karmakar, who died in the year 2001. His mother's name is Lt. Sabala Karmakar who died about 30 years back. The name of his grandfather is Lt. Uday Ch. Karmakar@ Uday Karmkar & Uday Ch Karmakar Bhowmick who expired during his childhood of the O/P. O/P has two brothers namely Lab Karmakar and Kush@ Kuch Karmakar. His elder brother Lab Karmakar died about 15 years ago. O/P has four sisters namely Anjali Karmakar, Piyo Karmakar, Genda Dam & Megha Karmakar, all of them were married and they resided in their respective matrimonial houses. The name of his wife is Susmita Karmakar and they have 3(three) sons namely Mithun Karmakar, Titon Karmakar, Moni Karmakar and a married daughter namely Sampa Karmakar. The paternal grandfather of the O.P party namely Uday Ch. Karmakar @ Uday Ch. Karmakar Bhowmick @ Uday Karmakar, S/O Lt. Pagari Karmakar Bhowmick @ Pagari Karmakar migrated to India from then East Pakistan prior to independence of India and he permanently settled at Vill.No.1 Patkata under P.S.

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Bijni(then) Dist.Gowalpara (then),Assam. The father of the O.P namely Ram Ch. Karmakar @ Ram Karmakar had also came to India along with his father and he settled in Assam,India. The O.P was born at Vill. No.1 Patkata under Manikpur P.S. Dist. Bongaigaon on 14-04-1973 and as such he is an Indian Citizen. The O.P. was born at Vill.No.1 partkata under Bongaigaon district and resides there in a joint parental residence along with his family. About 15 years back the O.P along with his family shifted to Village- Borlechiagaon under Bijni P.S. Dist. Chirang, BTR Assam and has been residing thereon since then. The paternal grandfather of the O.P namely Uday Ch Karmakar Bhowmick had purchased a plot of land measuring 8B- 0K-9L, covered by Dag No.267/89/268,241/239 of Lot No. 13 situated at village- No.1 Patkata, Dist- Gowalpara (then) Assam from on Nalini Madhab Joardar, S/O- Late Mani Kanta Joardar on 09-10-1952 by way of Registered Sale Deed duly registered before the Sub- Registrar, Dhubri, Assam. The grandfather of O.P. namely Uday Ch.Karmakar registered his name as a Citizen of India under Citizenship Act 1955 and the concerned registering authority issued Certificate of Registration Vide No. 5137 dtd. 24-12-1956 in this regard. The grand father of the O.P paid the Land Revenue in respect of the land covered by patta No. 60 purchased by him and the concerned revenue dept issued a Challan dated 17th March 1966.The name of the grand father Uday Karmakar and father Ram Ch. Karmakar of the O.P. is enrolled for the year 1966 under 41 No. Bijni L.A.C. from Vill- Patkata No.1,P.S. Bijni Dist. Gowalpara vide Sl. No. 55 & 56 House No. 32.The name of the grandfather of the O.P is recorded as Uday Karmakar instead of Uday Ch. Karmakar.The name of the O.P. is enrolled in the electoral roll of the year 2005,2010 & 2020 as Bikul Karmakar, S/O- Ram Karmakar under 33 No. Bijni L.A.C from Vill. No.Patkata,Mozua- Bijni Tahsil, Dist. Bongaigaon. The name of the O.P.Bikul Karmakar & his brother Lab Ch. Karmakar and Kuch Karmakar was mutated in the Record of rights in respect of a plot of land measuring 8B-1K-19L,covered by dag No. 55,56 & 108 of patta No. 60 situated at Village Patkata No. 1 Dist Bongaigaon in place of their deceased grandfather Uday Ch. Karmakar vide order of the Circle officer, Bijni Revenue Circle. The O.P passed his primary education from 803 No. Patkata L.P. School Dist- Bongaigaon. The head teacher of the said school issued a certificate in this regard vide Sl. No.82, Book No. 1 dtd.28-10-2016. The name of the mother of the O.P. is recorded as Samala Karmakar instead of Sabala Karmakar in the aforesaid certificate. A reference case was drawn in the name of elder brother of O.P namely Kuch @ Kush Ch. Karmakar before the Foreigners' Tribunal No.1, Bongaigaon vide BNGN/FT/Case No.1605/09 and the Hon'ble Tribunal vide its Judgment and Opinion dated 22-08-2017 was pleased to declare the O.P i.e the brother of present O.P as an Indian Citizen. Hence O/P claimed to be a Citizen of India and prayed to absolve him from the allegation leveled against him.

O/P submitted his evidence in chief in the form of Affidavit dtd. 07-01-2022, where he narrated more or less D.W.1, one Lakhyajit Ray (Lot Mandal) as D.W.2 & one Kush Karmakar as D.W.3. All witnesses are cross examined by the state.

Heard arguments of both sides.

In the course of evidence, O/P stated that, Ram Ch. Karmakar is his father & Sabala Karmakar is his mother. Father died in the year 2001 & mother died in the year 1992. He was born at village Patkata No.1. Land of Ext- A was purchased by his grandfather & the said land was sold by his father about 30/35 years back.

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His grandfather was originally inhabitant of the then East Pakistan, later on he migrated to India. His grandfather, father & mother casted their vote under Bijni L.A.C. O/P resided together with his two brother namely Lab & Kush Karmakar upto 1983. Lab Karmakar separated in the year 1983 and settled at village Batabari, Kush Karmakar is still residing at Patkata. O/P shifted to Borlechiagaon in the year 2005. O/P was resided with Kush Karmakar at village Palkata upto 2005. It is also stated that a case was registered in the name of his elder brother Kuch @ Kush Karmakar before F.T.No.1, Bongaigaon vide BNGN/FT/No.1605/2009 & the Tribunal was pleased to declare him as on Indian Citizen vide its judgment & opinion dtd. 22-08-2017.

As indicated above, proceedee claims Uday Karmakar as his grandfather & Ram Ch. Karmakar as his father. Now whether O/P could prove this fact in issue by adducing cogent & reliable evidence or not ?. Hence for the convenience, two issues are framed & which are required to be proved by the O/P.

Issue No.(i):- Whether Uday Karmakar & Ram Ch. Karmakar are/were Citizen of India, whom O/P claims to be grandfather & father, respectively, &

Issue No.(ii):- Whether present O/P is the grandson & son of said Uday Karmakar & Ram Ch. Karmakar respectively

I take up the issue No. (ii) first, i.e. whether O/P is son of Ram Karmakar, because unless this fact in issue has been proved, it may not necessary to delve into an examination of the Citizenship status of Ram Karmakar, whom the O/P claims to be his father.

Particulars of documents may be noticed as under :-

Ext. A is the Sale Deed dtd- 09-10-52.

Ext. B is the Registration Certificate dtd-24-12-1956.

Ext-C is the Revenue Receipt.

Ext-D is the Certified copy of voter list in the year 1966 at village - Patkata No.1 under 41 No. Bijni L.A.C. enrolled the name of Uday Karmakar. S/O- Nagari,

Ext-E is the Certified copy of voter list in the year 2005 at village - Patkata No.1 under 33 No. Bijni L.A.C. enrolled the name of Bikul Karmakar, S/O- Ram

Ext-F is the Certified copy of voter list in the year 2010 at village - Patkata No.1 under 33 No. Biini L.A.C. enrolled the name of Bikul Karmakar. S/O- Ram

Ext-G is the Certified copy of voter list in the year 2020 at village - Borlechiagaon under 33 No. Bijni L.A.C. enrolled the name of Bikul Karmakar, S/O- Ram

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Ext-H is the Jamabandi.

Ext-I is the School Certificate of 803 No. Patkata L.P.School.

Ext-J Certified Copy of Judgment Vide Case No. 1605/09.

The documents brought on the record for the purpose of establishing his relation with said Ram Ch. Karmakar are voter lists of 2005,2010 & 2020 & one Jamabandi, where it is indicated that the O/P is the son of Ram Ch. Karmakar.

O/P took most important plea that, he is the younger brother of Kush Karmakar from the same father, Ram Ch. Karmakar & said Kush Karmakar was declared Indian Citizen in the case No. BNGN/F.T/No. 1605/09 by the F.T. No.1 Bongaigaon vide its order dtd.22.08.2017. In this connection O/P submitted one Certified copy of Judgment/Order Vide Ext.J. It is also noticed that, Kush Karmakar came forward & examined him as D.W.3. In the course of his examination, he specifically stated that, present O/P is his younger brother. He himself inherited a plot of land from their deceased father together with O/P & another brother Lab Karmakar. This D.W.3 corroborated the entire pleas of O/P. The relation of D.W.3 & present O/P is established through Ext.H (Jamabandi). On perusal of Ext.H, it is found and which contains the information that, as per order of C.O. of Manikpur Revenue Circle dtd.30-03-99, a plot of land vide Patta No. 60 Dag No. 55, 56 & 108 measuring 8B 1K 19L situated at Village No.1 Patkata mutated by way of inheritance in the name of Sri Lab Karmakar, Kush Karmakar & Bipul Karmakar all S/O of Late Ram Karmakar. The contents of Ext.H can be taken into consideration as because it has been duly proved by the D.W.2 (Lot Mandal). In the course of examination of D.W.2, produced Original Jamabandi & Chitha Register & also identified the signature of issuing authority of Ext.H. Hence from the Ext.H, it has been established that, O/P is the brother of Kush Karmakar from the same father. Therefore, issue No. (ii) is decided in favour of the O/P.

On the other hand, issue No. (i) may be decided in favour of the O/P. Because, Ext.A (Registered) sale Deed dtd.9-10-52 establishes the existence of Uday Ch. Karmakar, whom O/P claims to be his grand father, on the Indian soil since 1952. Like Certificate of Registration dtd.24-12-56 (Ext-B) & voter list of 1966 (Ext-D) establishes the existence of Uday Karmakar & Ram Ch. Karmakar since before 1966.

O/P successfully established that he is the brother of Kush Karmakar from the same father & who is a declared Indian Citizen by the Foreigners' Tribunal. In the connection, the Hon'ble Gauhati High Court in W.P.(C) No.3128/17 Mahar Uddin Ali -VS- The Union of India & other decided on 23-02-21 it was held in para No.16....." if one of the siblings/blood relations has been able to prove his case that he is an Indian, there can't be any doubt that the other sibling will be also an Indian even if other sibling does not adduce any evidence except to prove that he is the brother, as otherwise, it would be against the law of nature & common sense that the siblings will have different Citizenship Status, unless relinquished by any one of them".

Considering the above discussions it can be easily said that, O/P successfully discharged the statutory burden U/S 9 of the Foreigners' Act.1946 the fact that he is not a Foreigners' Act,1946, the fact that he is not a foreigner but an Indian Citizen by birth.

Resultantly, O/P Bipul Karmakar @ Bikul Karmakar, S/O- Lt. Ram Ch. Karmakar, village- Patkata No.1, P.S. Manikpur, Dist. Bongaigaon is hereby **declared not a foreigner.**

Inform S.P. (B), Bongaigaon and District Commissioner, Bongaigaon for N/A.

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BNGN/FT/3927/09

A free copy of this order be furnished to the O.P.

Given under my hand and seal of the Tribunal on 3rd day of February, 2024.

Transcribed at my dictation
and corrected by me.

Fore

Memo No. BFT/08/07-24/331-A

Dated 03-02-24

Copy to:-

1. The District Commissioner, Bongaigaon.
2. The Superintendent of Police (B), Bongaigaon for N/A.

