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28.10.2024	20.10.2024	29.10.2024	04.11.2024	04.11.2024

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

Case No. FT-10/AGM/2297/2020.
F.T. Case No. 8082/GKJ/11 (old).
{Ref: IM(D)T Case No. 747/04}

State of Assam Referral Authority
-Versus-
Alijan Bibi @ Alijon Bibi
Wife of Rahman Ali @ Rahaman Ali @ Rohman Ali



... Opposite Party

Date of Order : 16/10/2024.

Appearance:

For the Referral Authority: Ms. Sangita Koeri, Asstt. Govt. Pleader
For the opposite party : Mr. Iskandar Azad,
Mr. A. D. Z. Hussain, Advocates.

PRESENT:
Rafiqul Islam, Member

ORDER
16/10/2024

1) The instant reference was originally made in the year 2004 under the provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 by the Superintendent of Police (B), Dhubri against the opposite party Alijan Bibi @ Alijon Bibi, Wife of Rahman Ali @ Rahaman Ali @ Rohman Ali, Village:-Baromera @ Baramera, Police station:-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 2005 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) Though the finding of the Inquiry Officer In Form-II was that the opposite party is not an illegal migrant, the comments of the Immediate Superior Officer was that 'The suspect does not appear to be an I.M', recommendation of Screening Committee was that 'It appears during enquiry that the suspect is not appears as an I.M.' and the conclusion of the Superintendent of Police was that 'I agree with the recommendation of S/C & referred to TBL for favour of disposal', the reference was received by the Tribunal for disposal and has been pending since 2005.

3) As the reference was received as stated above, notice was issued to the opposite party after registering the FT case in order to dispose of the case.

4) 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.

5) Opposite party filed written statement inter-alia stating that she is a citizen of India by birth and she was born on 25/02/1955 at Village:-Gopalerkutl, P.S:-Tufanganj, District:-Coochbehar (West Bengal). Her father and grandfather are/were citizens of India by birth and they were residents of Village:-Gopalerkutl, P.S:-Tufanganj, District:-Coochbehar (West Bengal) since before 1966. Her grandfather's name is Togru, grandmother's name is Hagri Bewa, father's name is Sekh Alimuddin @ Alimuddin Miah and mother's name is Bibi Rahima. Her father has 3 brothers including her father viz, i) Sekh Alimuddin @ Alimuddin Miah (opposite party's father), ii) Sekh Ashmuddin Miah and iii) Sekh Jole @ Jolemuddin Miah. She has altogether 5 brothers and sisters viz, i) Mojammel Hoque, ii) Alijan Bibi @ Alijon Bibi (opposite party), iii) Sonabhan Bibi, iv) Mojuma Bibi and v) Rejia Bibi. She got married to one Rahman Ali, S/o-Rahimuddin Sheikh of Village:-Boromera, P.O:-Agomani, P.S:-Agomani (earlier Golakganj), District:-Dhubri (Assam) about 53 years ago and during her conjugal life 5 children were born out of their wed-lock viz, i) Ali Baksh, ii) Afsar Ali, iii) Aatur Rahman, iv) Rokeya Bibi and v) Roshida Khatun. Her parents' names entered in the voter list of 1966 under 8 No. Tufanganj (Topsil) Legislative Assembly Constituency at Mouza:-Gopalerkutl. Her father was the owner and possessor of land measuring 0.15 Acre covered by Dag No. 834, 835, 836, Khatian No. 87, J. L No. 124 at Mouza:-Gopalerkutl. Her father and uncles Ashmuddin Miah and Jolemuddin were the owner and possessors of land measuring 3.25 Acre covered by Dag No. 457, 449, 748, 777, 773 at Mouza:-Gopalerkutl, Pargana Tufanganj. Her name entered in the voter lists of 1985 (along with her husband), 1997 (along with her husband and sons Alibox and Afsar Ali), 2010 (along with her husband and sons Alibox, Afsar Ali and Aatur Rahman) and 2023 (along with her husband, sons Alibox, Afsar Ali, grandson Moktadul Alom and others) at Village:-Baromera.

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6) 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?

7) Opposite party examined herself as DW-1, younger brother of the opposite party as D.W-2 and the official witnesses as D.W-3 and D.W-4 and exhibited some documents in support of her claim. None was examined for the Referral Authority.

8) 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.

9) 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.

10) Opposite party exhibited the following documents in support of her Indian citizenship:

- 1) Certified copy of voter list of 1966 of Sekh Alimuddin under 8 No. Tufanganj (Topsil) Legislative Assembly Constituency at Mouza/Gram:- Gopalerkuti as **Ext:A**.
- 2) Certified copy of Khatian No. 87, Dag No. 834, 835, 836 in the name of Alimuddin Sekh as **Ext:B** (proved in original).
- 3) Certified copy of Khatian bearing Touzi No. 497, Revenue Survey No. 1107, Dag No. 457, 449, 748, 777 and 773 in the names of Alimuddin Miah, Ashimuddin Miah and Jolemuddin as **Ext:C** (proved in original).
- 4) Certified copy of voter list of 2010 of the opposite party along with her husband and sons Ali Boks, Afsar Ali and Ataur Rahman under 25 No. Golakganj Legislative Assembly Constituency at Village:-Barmera as **Ext:D**.
- 5) Certified copy of voter list of 2022 of the opposite party along with her husband, sons Ali Boks, Afsar Ali, Ataur Rahman and daughter-in-law Mafila Bibi under 25 No. Golakganj Legislative Assembly Constituency at Village:-Barmera as **Ext:E**.
- 6) Copy of linkage certificate dated 30/06/2015 jointly issued by the Secretary and Pradhan, Balabhut Gram Panchayat in the name of opposite party as **Ext:F** (proved in original).

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- 7) Copy of Elector Photo Identity Card No. _____ in the name of opposite party as **Ext:G** (proved in original).
- 8) Copy of Aadhaar Card No. _____ in the name of opposite party as **Ext:H** (proved in original).
- 9) Copy of PAN Card No. _____ in the name of opposite party as **Ext:I** (proved in original).
- 10) Certified copy of voter list of 1985 of the opposite party under 25 No. Golakganj Legislative Assembly Constituency at Village:-Boromera as **Ext:M**.
- 11) Certified copy of voter list of 1997 of the opposite party along with her husband and sons Ali Box and Afsar Ali under 25 No. Golakganj Legislative Assembly Constituency at Village:-Barmera as **Ext:N**.

11) DW-2, Mojammel Hoque, younger 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 Voter Identity Card No. I

was also subjected to cross examination.

12) D.W-3, the authorized person or the Block Land and Land Reforms Officer, Tufanganj-I, In his evidence deposed that he is the Head Clerk attached to the office of the Block Land and Land Reforms Officer, Tufanganj-I and exhibited his authority letter as Ext:1. He deposed that Ext:C is the Khosora Khatian No. 331 of Mouza:-Gopalerkuti and Khatian No. 331 was prepared in the year 1955 in the names of Alimuddin Miyah, Ashimuddin Miyah and Jollimuddin Miyah, all sons of Tagru Sk. of Village:-Gopalerkuti and produced the scan copy of the original Khatian No. 331 duly authenticated by the Block and Land Reforms Officer, Tufanganj-I, which matched with the Ext:C and exhibited the scan copy of the Khatian No. 331 as Ext:2.

13) D.W-4 deposed that he is the Gram Pradhan of Balabhut Gram Panchayat and he has been elected as the Member of Ward No. 9/248 of Balabhut Gram Panchayat for the term 2023 to 2028. He deposed that after the selection as Member, he has been appointed as Pradhan of Balabhut Gram Panchayat on 11/08/2023. He deposed that Ext:F certificate was issued by earlier Pradhan of Balabhut Gram Panchayat on 30/06/2015 in the name of Alijan Bibi, D/o-Alimuddin Sk. of Village:-Gopalerkuti, P.S:-Tufanganj, District:-Coochbehar to the effect that Alijan Bibi, D/o-Alimuddin Sk. was the permanent inhabitant of Village:-Gopalerkuti and she got married to Rahman Ali, S/o- Rahimuddin Sk. of Village:- Boromera, P.S:-Golaganj,

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District:Dhubri (Assam). In cross examination he deposed that he had not Issued the Ext:F certificate and the counterpart, issue register and application etc. are not available in the office. He deposed that he could not say whether any verification was done at the time of issuance of the certificate or not.

14) 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 Sekh Alimuddin, whom the opposite party has claimed to be her father, was entered in the voter list of 1966 under 8 No. Tufanganj (Topsil) Legislative Assembly Constituency at Mouza/Gram:-Gopalerkuti. To prove the Ext:A certified copy, on the prayer of the opposite party, summon was issued to the Director of Directorate of State Archives, Department of Higher Education, Government of West Bengal and on receipt of summon the Director of Directorate of State Archives vide his letter dated 21/08/2024 informed the Tribunal that the Ext:A certified copy was Issued from their office and same is true and authentic. Along with the letter dated 21/08/2024 the Director of Directorate of State Archives submitted the copy of extract of original voter list duly verified by him and also verified the certified copy (Ext:A). Therefore Ext:A is proved and accepted to be genuine and secondary evidence. Though it appears from Ext:B certified copy of Khatian No. 87 that same was issued in the name of Alimuddin Sekh, whom the opposite party has claimed to be her father, opposite party has failed to prove the Ext:B certified copy. Therefore no reliance can be placed on Ext:B in absence of proof. From Ext:C copy of Khatian bearing Touzi No. 497, Revenue Survey No. 1107 was issued in the names of Alimuddin Miah, Ashimuddin Miah and Jolemuddin, whom the opposite party has claimed to be her father and uncle respectively. To prove the Ext:C opposite party examined DW-3, who in his evidence deposed that Ext:C is the Khosora Khatian No. 331 of Mouza:-Gopalerkuti and Khatian No. 331 was prepared in the year 1955 in the names of Alimuddin Miyah, Ashimuddin Miyah and Jollimuddin Miyah, all sons of Tagru Sk. of Village:-Gopalerkuti and produced the scan copy of the original Khatian No. 331 duly authenticated by the Block and Land Reforms Officer, Tufanganj-I, which matched with the Ext:C and exhibited the scan copy of the Khatian No. 331 as Ext:2. Therefore Ext:C is proved and accepted to be a trustworthy piece of documentary evidence. It is the case of opposite party that she was born on 25/02/1955 at Village:-Gopalerkuti, P.S:-Tufanganj, District:-Coochbehar (West Bengal) and she got married to one one Rahman Ali, S/o-Rahimuddin Sheikh of Village:-Boromera, P.O:-Agomani, P.S:-Agomani (earlier Golakganj), District:-Dhubri (Assam) about 53 years ago and after marriage she has been residing at Village:-Baromera with her husband and casting her vote regularly thereon. It appears from Ext:D, Ext:E, Ext:M and Ext:N certified copies of voter lists that the name of opposite party has been entered in the

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voter lists of 2010, 2022, 1985 and 1997 respectively under 25 No. Golakganj Legislative Assembly Constituency at Village:-Baromera with her husband. Though it appears from Ext:F certificate jointly issued by the Secretary and Pradhan of Balabhut Gram Panchayat that opposite party is the daughter of Alimuddin Sekh of Village:-Gopalerkuti and opposite party got married to Rahman Ali, S/o-Rahimuddin Sk. of Village:-Boromera, P.S:-Golakganj, District:-Dhubri (Assam), DW-4 in cross examination deposed that he had not issued the Ext:F certificate and the counterpart, issue register and application etc. are not available in the office. DW-4 further deposed that he could not say whether any verification was done at the time of issuance of the certificate or not. Therefore Ext:F certificate is not proved and no reliance can be placed on Ext:F as a linkage document. Ext:G, Ext:H and Ext:I are the Elector Photo Identity Card, AADHAR Card and PAN Card of the opposite party. It appears from Ext:G that though the reference was instituted in the year 2005 Elector Photo Identity card was issued in her name being the voter of Village:-Baromera under 25 No. Golakganj Legislative Assembly Constituency in the year 2013. It appears from Ext:I that opposite party is the daughter of Sekh Alimuddin. 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 Voter Identity Card No. DMY1538982 as Ext:J, PAN Card No. ASIPH7395H as Ext:K and Addhaar Card No. 2568 0921 1260 as Ext:L. It appears from Ext:J, Ext:K and Ext:L that the name of father of DW-2 is Alimuddin Sekh and therefore there is no reason to disbelieve the testimony of DW-2. In order to prove Ext:D, Ext:E, Ext:M and Ext:N, 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 02/09/2024 had submitted authenticated report regarding issuance of the respective certified copies of voter lists from their end. Therefore the Ext:D, Ext:E, Ext:M and Ext:N certified copies of voter lists are accepted to be genuine and secondary evidence.

15) 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 father of opposite was residing in India having landed property since before 1966 (Ext:C), the name of the father of opposite party was entered in the voter list of 1966 at Village:-Gopalerkuti (West Bengal) (Ext:A), 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 name of father was entered in the voter list of 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 2005,

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the name of opposite party has been entered in the voter lists at Village:- Baromera since the year 1985 to till date and has been regularly casting her vote at Village:-Baromera. The linkage of the opposite party with her father has been established from Ext:1 and the evidence of DW-2, brother of opposite party and therefore the opposite party cannot be termed as a foreigner/illegal migrant as suspected by the referral authority. Moreover, the referral authority itself found the opposite party not to be an illegal migrant/foreigner during its enquiry (Form.II, Report of the Enquiry Officer).

16) 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.

17) Considering the entire materials on record and the discussions above, I am of the considered opinion that the opposite party Alijan Bibi @ Alijon Bibi, Wife of Rahman Ali @ Rahaman Ali @ Rohman Ali, Village:-Baromera @ Baramera, Police Station:-Golakganj (now Agomoni), Dist:-Dhubri (Assam) is not foreigner.

18) The reference is answered in negative.

19) 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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