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01-12-2035	01-12-2035	12-12-2035	15-12-2035	15-12-2035
BEFORE THE FOREIGNERS TRIBUNAL 9TH, DHUBRI:ASSAM				

Present: Sri K.K. Das
Member.

Case No.: FT-9/113/GKJ/2019
(S.P.(B), Dhubri IM(D)T Case No. 2388/98)

Referring Authority: Union of India & others

Vs.

Proceedee : Naseruddin Sk
S/o Basaruddin Sk
Vill: Shernagar
P.S. : Golakganj (then), Agomani (now)
Dist.: Dhubri, Assam

Advocate for Referring Authority : Mr. AK Ray, Asstt. Govt. Pleader

Advocate for Proceedee : Mr. I Azad, Advocate

Date of Argument : 17-03-2025

Date of Final Order : 08-05-2025

F I N A L O R D E R

The Reference case was originally forwarded by the Superintendent of Police (B) Dhubri, Assam vide IM(D)T case No.2388/1998 on the basis of report made by the Local Verification Officer for determination of citizenship of Proceedee abovenamed. The case was initially registered and initiated before the Foreigners Tribunal 2nd, Dhubri and upon constitution of 64 numbers of Additional Tribunals as per Order of the Hon'ble Supreme Court, the Case was received on transfer and taken up for disposal by this Tribunal. There appeared

sufficient grounds to proceed and accordingly, notice was issued, giving the Proceedee an opportunity to show cause in respect of the matter.

On issuance of notice by this Tribunal, the Proceedee appeared and submitted written statement accompanied with copies of documents in defence, claiming, *inter-alia*, to be an Indian citizen as well as claimed to be possessed of sufficient documents to prove himself as an Indian citizen. After affording opportunity to Proceedee to tender evidence and submit documents in support of his defence, I heard arguments of both sides and also perused the evidence on record

Point for determination:

Whether the Proceedee is an illegal migrant Foreigner of the stream Post 1971 or of any other stream?

Concise Statement of Facts and Evidence Produced:

In this Reference case, the Referring Authority examined no witness. On the other hand, the Proceedee in his written statement denying the allegations of being a foreigner stated that allegation brought against him is totally false and concocted story. The Proceedee claims he had produced his documents in support of his nationality during visit of the LVO and accordingly upon verification of documents the LVO made an opinion in the reference to drop the proceeding. The Proceedee claims he had been born on 12.11.1950 in village Bidyardabri of Dhubri under the then Goalpara district of Assam where his grandfather & father had been resided but in subsequent time his father namely Basar Uddin Sk had shifted residence to village Dakhin Pub Jaldhoya under Tufanganj p/s of Cooch Behar district, West Bengal, thereafter his father and paternal uncle had again shifted to village Bhamandanga pt-II where they had voting right and immovable properties thereon since before the year 1966. The Proceedee stated names of grandparents as Sukur Ali & Khasar & Juran Bewa who begot 5 sons & daughters namely Kaismati, Basaruddin Sk (father of Proceedee), Farif Ullah Sk, Gerpu Sk & Miajan Sk. The Proceedee stated names of brothers & sisters as Basiran & Nazrul born to his mother Nesa Bibi. The Proceedee claim he married to one Jahira Bibi of village Shernagar under Agomani p/s of Dhubri and begot 6 children out of the wedlock. The Proceedee claim his father's name had been recorded in NRC 1951 in village Bidyardabri and his name had also appeared in voter list 1966 in village Jaldhoya, ps-Tufanganj of Cooch Behar, West Bengal against sl No.248 & Part No. 219 whereas name of his uncle Gerpu Sk had been appeared in voter list 1966 of

village Bhamandanga pt-II under 35 Golakganj LAC vide sl No.205, House No.51 & part No.70. The Proceedee further claim his name along with his wife Jahira had been appeared in voter list 1994 in Barmera and since the year 1997 in village Shernagar. The Proceedee claim he had purchased land measuring 1K-5L covered by Dag No.491 & Khatian No.239 of village Barmera by executing registered Deed No.473 of 1976. It is also claimed that Proceedee's wife Jahira and her brothers had sold out land being joint pattadar of land measuring 3B-10.5L bearing Khatian No.18 of village Shernagar to one Jahangir Hussain & Khorshed Alom both sons of Dhanir Uddin Sarkar through a registered Sale Deed No.456 of 1983. The Proceedee claims he has been a regular voter of village Shernagar and as such he obtains an EPIC issued by the Election Commission of India. The Proceedee stated he had obtained a License from the Licensing Authority of Dhubri MP for Push Cart/Handcart. Thus the Proceedee claims his Indian citizenship and prayed for dismissal of the reference.

 The Proceedee claimed to have possessed sufficient documents to prove his case of being an Indian national.

In course of evidence stage, the Proceedee produced and exhibited 13 numbers of documents to substantiate his claim of being an Indian citizen.

Ext. A- One certified copy of E/ Roll -1966 of village- Bhamandanga pt-II in which the name of Gerpu Sk s/o Sukur Ali is enlisted.

Ext. B – One certified copy of E/ Roll -1994 of village- Barmera in which the name of Naseruddin Sk and Jahira Bibi are enlisted.

Ext. C – One certified copy of E/ Roll -1997 of village- Shernagar in which the name of Naseruddin Sk and Jakira Bibi are enlisted.

Ext. D – One certified E/ Roll -2005 of village- Shernagar in which the name of Naseruddin Sk, Jahira Bibi & Joynal Abedin are enlisted.

Ext. E – One certified E/Roll -2015 of village- Shernagar in which the name of Naseruddin Sk, Jahira, Joynal, Anowara, Aynal, Mannan are enlisted.

Ext. F – One certified E/Roll -2022 of village- Shernagar in which the name of Naseruddin Sk, Jahira, Joynal, Anowara, Aynal, Mannan etc. are enlisted.

Ext. G- Copy of certified registered Deed dated 24.01.1976.

Ext. H - Copy of EPIC of Naseruddin Sheikh s/o Basar Uddin Sheikh.



Ext. I - Copy of License issued by Agomani Gaon Panchayat to Naseruddin Sk for plying Push Cart.

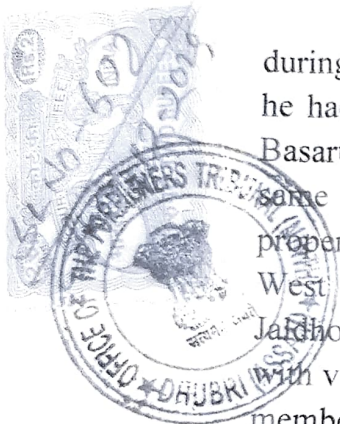
Ext. J - Copy of PAN of Nacher Uddin Sheikh.

Ext. K - Copy of Aadhaar of Nacher Uddin Sheikh.

Ext. L - Copy of Certificate dated 05.11.1993 issued by Rampur No.II Gram Panchayat, Tufanganj Dev. Block.

Ext. M - Copy of Certificate dated 21.04.2015 issued by Rampur-II GP.

One printed vernacular voter list 1966 of village Jaldhoya is further submitted in this case where name of Proceedee's father Basiruddin Miah s/o Khasar had been recorded in serial No.248.



The Proceedee presented himself for cross-examination as DW 1 and during cross-examination, the Proceedee, inter alia, stated that in the year 1950 he had been born in village Bidyardabri under Dhubri district and his father Basaruddin Sk and grandfather Sukur Ali@ Khasar were original residents of same village. It is also deposed categorically that his father got no land properties in village Bidyardabri and in the year 1955-56 he had moved to West Bengal and started residing in his maternal uncle house of village Jaldhoya, Rampur under Tufanganj p/s where he had stayed for about 10 years with voting right. The Proceedee further stated that his father along with family members had again come to village Bhamundanga and settled in the house of paternal uncle Gerpu Sk for 2/3 years and during this stay, Proceedee's brother Nazrul had been born. The Proceedee as DW-1 deposed categorically that in the year 1967 his father had died and after one year of death he had started working as servant in the house of one Jasimuddin of village Shernagar and in subsequent time, he had purchased land in village Baromera and he married to Jahira of village Shernagar. The Proceedee stated the land purchased in Baromera had been requisitioned by the Indian Railway and as such he had to purchase another plot of land in village Shernagar and since then he has been staying in Shernagar having voting right. The Proceedee deposed categorically that his father had cast vote in village Jaldhoya in the year 1966 though he had stayed in village Bhamundanga in relevant time. The DW-1 stated his mother had died in the year 1963. The Proceedee as DW-1 states he is a regular voter of Shernagar and documents of land purchased by him is submitted in this case. The Proceedee refuted the suggestion of making false deposition in order to become an Indian citizen.

The Proceedee also adduced evidence of Yashomuddin Munshi as DW-2, claiming him as cousin in defence. I have gone through his statements carefully made during cross-examination. The witness duly supported the defence version of the Proceedee.

Opinion and reasons thereof:

I have perused and scrutinized the oral evidence as well as have meticulously gone through the documents and materials available on record in the proceedings.

After careful scrutiny of exhibited voter list 1966 of village Bhamandanga pt-II and printed voter list 1966 of West Bengal supported by oral evidences of DWs, it appears that Gerpu Sk and Basiruddin Sk whom the Proceedee claimed as his paternal uncle & father had got their names recorded as voters of assembly elections respectively of the State of Assam and West Bengal in the year 1966. The oral evidence of Proceedee as DW-1 further transpires existence of Proceedee since his birth in the year 1950 in Indian soil. The Proceedee stated categorically on oath that his father Basiruddin Sk had moved to village Jaldhoya of Cooch Behar in the year 1955-56 and he had stayed for 10 years in the house of his maternal uncle's house and during his stay in Jaldhoya his father had cast vote for assembly election of the West Bengal state. The DW-1 further stated that his father had again returned to the State of Assam and he had stayed for about 2/3 years in his brother namely Gerpu Sk's house of Bhamandanga where Proceedee's lone brother Nazrul had been born. The DW-1 deposed during cross-examination by the learned AGP that in the year 1967 his father had died and after 1 year of death the Proceedee started working as Servant in one Jasimuddi's house of village Shernagar and in subsequent time, he had purchased land in village Baromera which is situated adjacent to Shernagar village but land so purchased in Baromera had been requisitioned by the Indian Railway and as such he had to purchase another plot of land in village Shernagar and since then he has been residing in the house constructed by him in Shernagar having continuous voting right. The Proceedee has adduced oral evidence of Yashomuddin Munshi as DW-2 to establish and prove linkage with his father and his stay in Indian soil. From the oral evidence, the parental linkage with Basiruddin Sk is found to be

established in an adequate manner, since evidence of Proceedee's cousin Yashomuddin Munshi duly corroborated the deposition of the DW-1.

The oral testimonies of DW-1 are duly substantiated by the evidence of DW-2. The learned AGP could bring no rebuttal evidence during cross-examination of the DWs and as such, the evidence tendered by them remains unchallenged.

The Proceedee further relied on e-certified voter lists of the year 1994 to subsequent period of village Baromera & Shernagar wherein names of Proceedee, his wife and sons are enlisted as electors. The names of electors as well as names of villages appeared in exhibited voter lists are duly resembled with the names contended by the Proceedee in his written statement and during deposition. That apart, the verification report dated 20.08.2024 received from the learned Election Officer, Dhubri with no adverse remark made this Tribunal to hold electoral rolls as authentic. Accordingly, the exhibited voter lists are identical to the contention of Proceedee as to the existence of Gerpu Sk (paternal uncle) in the soil of India since the year 1966 to its subsequent period. The continuous existence of descendants including Proceedee himself and Proceedee's father Basiruddin Sk is further held established in sufficient manner.

In support of contention of purchasing land by the Proceedee, he adduced a certified registered Deed No.473 dated 24.01.1976 as Ext-G which apparently establish the said contention as true.

The Proceedee further adduced numbers of documents such as License of pushcart /handcart, Elector Photo Identity Card etc are of post 1971 period. But these documents go to show continuous stay of Proceedee in the State of Assam having voting right. Hence, this Tribunal of the view that Proceedee is a regular voter of village Shernagar. As such, Ext-H i.e., Elector Photo Identity Card has been issued to the Proceedee and the Inquiry Officer has rightly held in ANNEXURE-A of reference records for dropping this case.

The documents produced in defence have not been contradicted or disputed by the Referring Authority side. Thus, in consideration of entirety of documents produced, it appears that the Proceedee or his ancestors had not illegally entered into the territory of India or the State of Assam, as suspected.

The documents have been found to be reliable, trustworthy and acceptable being in order and having been issued by the proper authorities and

as such, proved. The documents have thus got evidentiary value. Thus, the Proceedee from all possible aspects of the matter, cannot be termed or declared to be a foreigner of the stream Post 1971 or any other stream under the law. As such, the Proceedee has been able to discharge the burden cast on him under Section 9 of the Foreigners Act, 1946 to prove the fact that he is not a foreigner under the law.

O R D E R

The Reference case is disposed of on contest. In view of the discussions made above, this Tribunal is of the considered opinion that the Proceedee appears as not being a foreigner of the stream Post 1971 or of any other stream. Therefore, the Reference case against the Proceedee is answered in negative.

Send a copy of this Final Order to the District Magistrate, Dhubri, Election Office, Dhubri and the Superintendent of Police (B), Dhubri for information and necessary action.

The Final Order containing the opinion of this Tribunal is delivered under my hand and seal on this the 8th day of May, 2025 at Dhubri, Assam.

Judgment and order passed by

Sd/-

(KIRTI KAMAL DAS)

Member,

Foreigners' Tribunal

Dhubri, Assam).

