
(2013) 02 GAU CK 0011

Gauhati High Court

Case No: W.A. No. 65 of 2010

Abdul Khalique (Md.)

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Feb. 1, 2013

Acts Referred:

- Foreigners Act, 1946 - Section 9

Citation: (2013) 1 GLT 941

Hon'ble Judges: B.P. Katakey, J; A.K. Goswami, J

Bench: Division Bench

Advocate: Inam Uddin, Ms. R. Momtaz and Mr. A.H.M.R. Choudhury, for the Appellant; K.N. Choudhury, Addl. AG, Assam, Ms. B. Gogoi and GA, Assam, for the Respondent

Final Decision: Allowed

Judgement

B.P. Katakey, J.

This appeal by the proceedee under the provisions of the Foreigners" Act, 1946, is directed against the judgment and order dated 8/1/2010 passed by the learned Single Judge in W.P. (C) No. 4611/2007, dismissing the writ petition filed by the present appellant challenging the order dated 9/4/2007 passed by the learned Member, Foreigners" Tribunal, No. 2, Nagaon in F.T. Case No. 292/06. On the basis of the reference made by the S.P. the aforesaid F.T. case has been registered against the appellant The Tribunal, after registration, issued notice on receipt of which the appellant entered appearance and filed a written statement contending inter alia, that he is an Indian national by birth as he was born in Paghali village under Samaguri P.S. It is also been pleaded that his grand father"s name is Abdul Wahab appeared in the voter"s list pertaining to the year 1965 in respect of Samaguri Legislative Assembly Constituency against House No. 30 SL No. 80 part 154 of village Paghali.

2. The appellant in support of his contention has examined witness including himself as witness 1, the Gaon Bura of village Paghali as witness No. 2 and the villagers of Dijubasti village as witness no. 3. The said witnesses, however, were not cross examined by the State. The voter's list pertaining to the year 1965 containing the name of Abdul Wahab, who according to the appellant is his grand-father, was also proved, and was marked as Exhibit "ka"

3. The Tribunal upon appreciation of the evidence adduced by the parties has rendered its opinion vide order dated 9/4/07 that the appellant is a foreigner coming to India after 25/3/71. The Tribunal has rejected the evidence of witness Nos. 1 and 3, on the ground that the Gaonbura of Dijubasti village in his evidence has stated that he does not know the name of appellant's grandfather and he also does not know who is Abdul Wahab. The appellant thereafter, file W.P. (C) 4611 / 07 which was also dismissed by the learned Single Judge upholding the opinion rendered by the Tribunal.

4. We have heard-Mr. Inam Uddin, learned counsel for the appellant, Mr. N. Upadhyay, learned State counsel for the State of Assam and Mr. M. Bhagabati, learned C.G.C., for the Union of India,

5. It has been contended by the learned counsel for the appellant that it is evident from the deposition of witness Nos. 1, 2 and 3 as well as Exhibit "ka" voter's list that Abdul Wahab was the grandfather of the appellant, who was a voter in respect of Samaguri Legislative Assembly Constituency, whose name appeared in the voter list pertaining to the year 1965, and hence, according to the learned counsel, the tribunal ought not to have opined that the petitioner is not an Indian, more so when the positive statement of the appellant and his witnesses have not been challenged by the State by way of cross examination.

6. The State counsel as well as the Central counsel on the other hand, supporting the opinion rendered by the Tribunal have submitted that since the Gaonbura of Dijubasti village did not know the name of the appellant's grandfather and also stated an oath that he does not know who is Abdul Wahab, the Tribunal has rightly rendered opinion that the appellant is a foreigner and not an Indian,

7. Section 9 of the Foreigners' act, 1946 imposed the burden on a proceedee to prove that he or she is not a foreigner but Indian national. To discharge the burden, the appellant has examined 3 witnesses as noticed above.

8. The appellant in his deposition, in categorical term, has stated that his grandfather's name is Abdul Wahab whose name appears in the voter's list of the year 1965 pertaining to Samaguri legislative Assembly constituency. The witness Nos. 2 and 3, namely, the Gaonbura and the villagers of Dijubasti village has proved the said voter's list, which is marked as Exhibit "ka". Witness No. 3 has also stated that Abdul Wahab is the grandfather of the appellant. Such statements of witnesses have not been challenged by

the State by way of cross examination. Witness No. 2, the Gaonbura of Dijubasti however, has stated that though the name of one Abdul Wahab appears in the voter's list of 1965 pertaining to Samaguri Legislative Assembly Constituency, he, however, does not know who is Abdul Wahab and whether he is the grandfather of the appellant. Witness Nos. 1 and 3 having categorically stated that Abdul Wahab is the grandfather of the appellant, such evidence of witness No. 2 would not demolish the case of the appellant as revealed from the evidence adduced by him, more so, when there was no cross examination of any of the witnesses examined.

9. In, view of the above, we are of the opinion that the appellant could discharge the burden, as imposed by Section 9 of Foreigners Act, 1946, to prove that he is an Indian national and not foreigner. Hence, the opinion of the Tribunal rendered on 9.4.07 in F.T. case No. 292/06 and the judgment and order dated 8/1/10 passed by the learned Single Judge in W.P. (C) 4611/07 are set aside. The writ appeal stands allowed.

No cost,

Registry is directed to send down the records.