

BEFORE THE MEMBER, FOREIGNERS TRIBUNAL NO.1 GOALPARA

PRESENT: Ipsita Gohain, Member

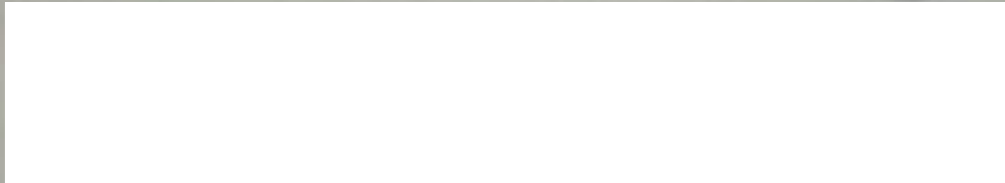
F. T Case No. 8097/G/16

(Ref.:- District Case No. 620/2004)

State of Assam . . . . . Complainant

-vs-

1. Md. Jahanuddin S/O Lt. Eale Sk.
2. Romila Begum
3. Ashad Ali
4. Rafikul Islam
5. Mukta! All.



For the State : Md. S. Hussain, Asst. Govt. Pleader

For the Proceedee : Mr. Ashim Mobarak

Date of Argument :31.8.2023

Date of Opinion :19.10.2023

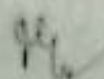
OPINION

This is a reference u/o 2 (1) of the Foreigners (Tribunals) Order 1964 which was forwarded by the Superintendent of Police (B), Goalpara to this Tribunal to render an opinion as to whether the Proceedee Md. Jahanuddin S/O Lt. Eate Sk. and his dependents-Romila Begum, Ashad



the district of Goalpara, Assam are or are not "Foreigners" within the meaning of Sec 2 (a) of The Foreigners Act 1946. The Superintendent of Police (B), Goalpara directed the S.I (B) Bhubaneswar Sarmah of Goalpara P.S. to conduct an enquiry of the illegal migrants Md. Jahanuddin S/O Lt. Eate Sk. and his dependents- Romila Begum, Ashad Ali, Rafikul Islam and Muktal Ali of Village - Borpahar, P.S. Goalpara in the district of Goalpara, Assam. Thereafter the S.I. (B) of Goalpara P.S. conducted the enquiry and submitted a report to the Superintendent of Police (B), Goalpara and the Superintendent of Police (B), Goalpara forwarded the reference to (then) IM(D)T. After the IMDT Act was declared unconstitutional by the Hon'ble Supreme Court, the related reference was transferred to this Foreigners Tribunal which was registered and numbered as F.T. Case No. 8097/G/16.

This Tribunal, by order dated 14.6.2022 issued notice to the proceedee. One, namely, Eyar Ali S/O Md. Jahanuddin, appeared and filed a petition stating that the proceedee, Md. Jahanuddin, who was his father, had expired on 07.07.2013. He had also produced a Death Certificate issued on 07.08.2013 by the Registrar of Birth & Death, Agia Primary Health Centre, Goalpara certifying that Jahanuddin Sheikh S/O Elimuddin Sheikh and Khaitun Nessa of Milannagar, Santipur, Goalpara died on 07.07.2013 at Milannagar, Santipur, Goalpara. The Registration No. being 57/2013. It is seen that the information in the certificate containing the signature of the issuing authority, Dr. Mahammad Ali, Registrar, Birth & Death, Agia Primary Health Centre, Goalpara had been taken from the original record of Death which is the Register for Agia PHC, Balijana Block of Goalpara district, Assam and as such, the

  
Member  
Foreigners Tribunal (I)  
Goalpara, Assam

information is considered to be truthful and acceptable.

They had also filed a petition stating that the dependent, Muktal Ali is not one of their family member and prayed for a Police enquiry to determine the same. Pursuant to the order of this Tribunal, a report was produced with the observation that Muktal Ali was not a family member of Md. Jahanuddin and as such, the SP (B), Goalpara was requested to do the needful.


Another petition was filed U/S 11 of CPC praying for dismissing the dependent, Ramila Begum, from this reference as per principles of res judicata as she had been declared to be an Indian in an earlier proceeding in FT Case No. 8098/G/2016 by Opinion dated 20.12.2022. The records of FT Case No. 8098/G/2016 was called for and after verifying the records and being satisfied that the proceedee in FT Case No. 8098/G/16 and the dependent, Ramila Begum in this present Reference are the same and one person, her name was struck off from this proceeding as another proceeding on the same issue cannot be initiated against the same person which is barred by the principles of res judicata.

Thereafter, dependents, Ashad Ali and Rafikul Islam had filed their written statements. Though both of them had filed their written statement along with some documents separately, however, all the pleadings and facts in their written statement are similar. Both of them had stated, inter-alia, that the allegation brought against them was false and baseless and that they were Indian Citizens by birth and that the Proceedee, Md. Jahanuddin was their father and they belong to Goria community and that the names of their grandparents (parents of the Proceedee) were late Eli





Sk and late Khaitun Nessa and Proceedee and Eyara Begum were Ashad's parents and Ramila Begum was his stepmother and that their father (Proceedee) and grandfather were born and brought up at village Paikan Pt II under the then Dudhnoi P.S. and they were born and brought up at village Milan Nagar, Santipur under the Goalpara P.S. and that their father (Proceedee) had a plot of land at Paikan Pt II and that their parents shifted to Milan Nagar, Santipur from village Paikan pt II and that names of their parents were enrolled in the voters list of 1965 onwards and that their father (Proceedee) died on 7.7.2013 and that their names along with other family members were enrolled in the voters list of 2005 and 2017 and that their elder sister, Tahirun Begum received Opinion in her favour from F.T.No.1, Goalpara and that this is a false reference against them and is liable to be dismissed.





In support of their pleadings in the written statement, the dependents, Ashad Ali S/O late Jahanuddin Sheikh had examined himself as DW 1, Rafikul Islam S/O late Jahanuddin Sheikh as DW 2, Yar Ali S/O late Jahanuddin Sheikh as DW 3, Tahirun Begum D/O late Jahanuddin Sheikh as DW 4, Headmistress of Chandaria Pathar M.E.School as DW 5. All the DWs have been cross examined.

The dependent, Ashad Ali S/O late Jahanuddin Sheikh, aged about 37 years, resident of Milannagar, Santipur (Barpahar) under Bhalukdubi Revenue village, as DW 1 had related all the facts stated in his written statement. In his cross-examination, he had stated, inter-alia, that he was born at Milannagar, Santipur, P. 5- Goalpara, but he does not remember his date and year of his birth and he does not have any documents as regards his birth and that his grandparents were late Elimuddin Sheikh and




Member  
Foreigners Tribunal (I)  
Goalpara, Assam




Khaitun Nessa and they had four sons and that his father was born at Paikan Pt II, Krishnai and died on 7.7.2013 and that he denied that his father was not Jahanuddin Sheikh and that his father married twice- his mother late Eiyara Begum and Rabila Begum and that his mother expired in 1985 when he was about 1/ 1 1/2 years old and that from his mother, there were four daughters and three sons and Jaheda was younger to Rafikul and was 4/ 5 years younger to him and Rafikul was 2/ 3 years younger to him and that his parents and other family members shifted to Milan Nagar, Santipur before 1985 and he was born there and that the name of his father was found in the voters list of 1965 from village Paikan and that his name first appeared in the voters list of 2005 along with his father and that one Ft case was initiated against his elder sister, Tahirun and she was declared an Indian and that Tahirun got married to Getharu of Kismatpur.


The dependent, Rafikul Islam S/O late Jahanuddin Sheikh, aged about 26 years, resident of Milannagar, Santipur (Barpahar) under Bhalukdubi Revenue village, as DW 2 had related all the facts stated in his written statement. In his cross-examination, he had said, inter-alia, that he studied in Chandaria Pothar M.E. School from class V to class VI and that in 2009 he was in class VI and that he does not remember the name of his Headmaster and that he was born at Milan Nagar, Santipur, P.S. Goalpara and his date of birth was 15.4.1996 and his father was Jahanuddin who died on 7.7.2013 and his grandparents were late Elimuddin Sheikh and Khaitun Nessa and they resided at Paikan Pt II and that his grandfather had four sons and one daughter and that his father married twice - his mother and late Eiyara Begum died in 1985 and she had four daughters and three sons and that he does not know who was




Abul Hussain and that after the death of step mother, his father married his mother Rabila Begum and that she was alive and had one daughter and one son, himself and that Asad Ali was 11 years elder to him and that he had not seen his grandparents and stepmother and that the name of his father was found in the voters list of 1965 from village Paikan and that he does not know when his mother's name had appeared and that his name first appeared in the voters list of 2017 and that Tahirun was his step sister and one FT case was initiated against his elder sister, Tahirun Nessa.



The DW 3, Yar Ali S/O late Jahanuddin Sheikh, aged about 42 years, Milannagar, Santipur (Barpahar) under Bhalukdubi Revenue village, had stated that he was the elder brother of the dependents of Proceedee, Ashad Ali and Rafikul Islam and thereafter, he had repeated all the statements that had been made by the dependents of Proceedee, Ashad Ali and Rafikul Islam in their Evidence-in-chief. In his cross-examination, he had said, inter-alia, that his name appeared in the voters list of 1997 with his father Jahanuddin and in 2005 along with Asad Ali and that he was born at Paikan Pt II and Tahirun was his sister and she was married to Getharu (Aminul Islam) of Kismatpur and he died before the death of his father and that name of his father was found in the voters list of 1965 from village Paikan and that his younger brother had studied in Chandaria Pothar M.E. School till class VI/VII and that Asad was four years younger to him and Rokibul was nine years younger to him and she denied the suggestion that Asad and Rafikul were not his brothers.



The name of the DW 3, Yar Ali is found in the voters lists of 1997, 2005, 2017 and 2022, Exts. T, U, W and X along with his father, Jahanuddin Sheikh and the two dependents, Ashad Ali and Rafikul Islam.




The DW 4, Taherun Begum D/O late Jahanuddin Sheikh W/O Lt. Amirul Islam, aged about 51 years, resident of Ward No. 14, Goalpara Town had stated that she was the elder sister of the dependents of Proceedee, Ashad Ali and Rafikul Islam and thereafter, she had repeated all the statements that had been made by the dependents of Proceedee, Ashad Ali and Rafikul Islam in their Evidence-in-chief. In her cross-examination, she had said, inter-alia, that her father was Jahanuddin and he first married Eiyara Begum and she died about 37 years ago and had seven children and that Tahirun was the second and that when Asad was about 1/ 1 ½ years old, her mother expired and father married Rabila Begum and that Asad was born at Milan Nagar Santipur.

To corroborate her claim and her statements, the proceedee has filed the following documents as exhibits:

Ext.P: Registered Sale Deed issued on 9.4.53.

Ext.Q: Certified copy of Voters List of 1965 pertaining to Paikan Pt II under 37 No. Goalpara East L.A.C incorporating the names of Jahanuddin Sk S/O Ilimuddin Sk and Iyara Begum W/O Jahanuddin, aged about 28 years and 21 years respectively.

Ext.R: Certified copy of Voters List of 1970 pertaining to Paikan Pt II under 37 No. Goalpara East L.A.C incorporating the names of Jahanuddin Sk S/O Ilimuddin Sk and Iyara Begum W/O Jahanuddin, aged about 32 years and 25 years respectively.



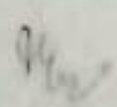
Ext.S: Certified copy of Voters List of 1979 pertaining to Paikan Pt II under 37 No. Goalpara East L.A.C incorporating the names of Choinuddin Sk S/O Ilimuddin, Robijan Bibi W/O Choinuddin, Jahanuddin Sk S/O Ilimuddin Sk and Iyara Begum W/O Jahanuddin, aged about 46 years, 36 years, 39 years and 32 years respectively.

Ext.T: Certified copy of Voters List of 1997 pertaining to Bhalukdubi under 37 No. Goalpara East L.A.C incorporating the names of Jahanuddin Sk S/O Ili Sk, Rabila Begum W/O Jahanuddin Sk, Iyar Ali S/O Jahanuddin Sk, Jaherun Begum W/O Jahanuddin Sk, Saberun Begum W/O Jahanuddin Sk and Abul Hussain S/O Jahanuddin Sk, aged about 55 years, 30 years, 19 years, 27 years, 22 years and 30 years respectively.

Ext.U: Certified copy of Voters List of 2005 pertaining to Bhalukdubi under 37 No. Goalpara East L.A.C incorporating the names of Jahanuddin Sk S/O Ili Sk, Rabila Begum W/O Jahanuddin Sk, Iyar Ali S/O Jahanuddin Sk, Jiyar Ali S/O Jahanuddin Sk, Abeda Begum W/O Jiyar Ali and Ased Ali S/O Jahanuddin Sk, aged about 62 years, 37 years, 26 years, 24 years, 19 years and 20 years respectively.

Ext.V: Death Certificate issued to Jahanuddin Sk S/O Lt. Elimuddin on 7.8.2013.

Ext.W: Certified copy of Voters List of 2005 pertaining to Bhalukdubi under 37 No. Goalpara East L.A.C incorporating the names of Rabila Begum W/O Jahanuddin Sk, Iyar Ali S/O Jahanuddin Sk, Jiyar Ali S/O Jahanuddin Sk, Ased Ali S/O Jahanuddin Sk, Abeda Begum W/O Jiyar Ali, Runa Begum W/O Iyar Ali, Anowara Begum W/O Ased Ali and Rafikul Islam S/O Jahanuddin Sk, and aged about 48 years, 37 years, 35 years, 31 years, 30 years, 28 years, 25 years and 19 years respectively.



Member  
Tribunal  
Assam



Ext.X: Certified copy of Voters List of 2022 pertaining to Bhalukdubi under 37 No. Goalpara East L.A.C incorporating the names of Rabila Begum W/O Jahanuddin Sk, Iyar Ali S/O Jahanuddin Sk, Jiyar Ali S/O Jahanuddin Sk, Ased Ali S/O Jahanuddin Sk, Abeda Begum W/O Jiyar Ali, Runa Begum W/O Iyar Ali, Anowara Begum W/O Ased Ali and Rafikul Islam S/O Jahanuddin Sk, and aged about 53 years, 42 years, 40 years, 36 years, 35 years, 33 years, 30 years and 24 years respectively.

Ext.Y: Opinion of Taherun Begum W/O Amirul Islam, R/O village. No.6 Chandaria Pathar passed on 15.2.2016 by the F.T.No. 1, Goalpara.

Ext.Z: School Certificate issued to Rofikul Islam S/O Jahanuddin Sk of Milan nagar, Santipur on 18.6.2015.

I have heard Learned Counsel for the Proceedee and the Learned Counsel representing the State. Also perused the written statement, evidence and documents relied upon by the dependents of the Proceedee and the argument advanced by Ld. Counsels of both sides.

On perusal of the W.S, evidence and documents relied upon by the Proceedee it is found that *Ext. P* is a registered Sale Deed of a plot of land at village Paikan, Krishnai, registered on 09.04.1953, wherein, the name of the seller is found as Jahanuddin Sheikh S/O Eli Sheikh. The name of Jahanuddin Sheikh S/O Eli Sheikh is also found in the Voters lists of 1965, 1970 and 1979 produced as *Exts. Q, R and S* from village Paikan, Krishnai. In the Voters list of 1979, *Ext. S*, the name of Eyara Begum W/O Jahanuddin is also found along with Jahanuddin. The dependents, Ashad Ali and Rafikul Islam, had projected Jahanuddin Sheikh S/O Eli Sheikh as their father, i.e, the proceedee and Eyara Begum W/O Jahanuddin as the mother of dependent, Ashad Ali and step-mother of Rafikul Islam.

Thereafter, they had stated that Eyara Begum died in 1985 and Jahanuddin married Romila Begum and they had shifted from Paikan to Milannagar, Santipur under Bhalukdubi Revenue village. The Voters list of 1997 produced as *Exts. T* from village Bhalukdubi, which is the revenue village of Milannagar, Santipur, show the name of Jahanuddin Sheikh S/O Eli Sheikh, Robila Begum W/O Jahanuddin Sheikh, Eyar Ali S/O Jahanuddin Sheikh and others.

*Ext. U* is the Voters list of 2005 of village Milannagar, Santipur under Bhalukdubi Revenue village, which contains the name of the Ashad Ali S/O Jahanuddin Sheikh along with Jahanuddin Sheikh S/O Eli Sheikh, Robila Begum W/O Jahanuddin Sheikh, Eyar Ali S/O Jahanuddin Sheikh and the dependent claims the Ashad Ali S/O Jahanuddin Sheikh and himself as the same and one person and claims to be the son of Jahanuddin Sheikh S/O Eli Sheikh by virtue of being an electorate along with him.

Thereafter, the dependents had stated that their projected father, Jahanuddin had died and had produced the death certificate as *Ext. Vn* original which was issued on 07.08.2013 by the Registrar, Birth & Death, Agia Primary Health Centre, Goalpara.

The dependent, Rofikul Islam S/O Jahanuddin Sheikh had claimed that his name appears along with his projected mother, Robila Begum W/O Jahanuddin Sheikh in the voters list of 2017 and 2022 of village Milannagar, Santipur under Bhalukdubi Revenue village and to substantiate his claim, he had produced these Voters list as *Exts. Wand X*, which shows the names of Rofikul Islam S/O Jahanuddin Sheikh along with Robila Begum W/O Jahanuddin Sheikh, Eyar Ali S/O Jahanuddin



Member  
Assam Legislative Assembly  
Dispur, Assam

Sheikh and also contains the name of dependent, Ashad Ali S/O Jahanuddin Sheikh and others.

*Ext. P and Q* shows the proceedee, Jahanuddin Sheikh S/O Elimuddin Sheikh as a citizen of India and appearance of the names of the dependents, Ashad Ali and Rafikul Islam in *Exts. U, W and X* substantiate the claim of the dependents as being the sons of proceedee, Jahanuddin Sheikh S/O Elimuddin Sheikh of 1953 Sale Deed and 1965 Voters list.

The two dependents had also produced an Opinion dated 15.02.2016 which was rendered in the name of one, Taherun Begum D/O Lt. Jahanuddin Sheikh and W/O Amirul Islam declaring her an Indian and the dependents claim Taherun Begum as their elder sister and *Ext. Y* is the said Opinion. Taherun Begum had also deposed as DW 4.

*Ext. Z* is an original School certificate issued on 18.06.2015 by the Head Master, Chandaria Pathar M. E. School, Goalpara certifying that Rafikul Islam S/O Jahanuddin Sk. of village Milannagar, Santipur, Baladmari, Goalpara had passed the Annual Examination, 2009 for promotion to class VII and left the school on 31.12.2009. His date of birth was 15.4.1996.

The Headmistress, Chandaria Pathar M. E. School, Goalpara, Smti. Dhulisri Das was examined as DW 5 and she had said, inter-alia, that, the certificate, *Ext. Z* was issued from their school vide Admission Register Sl. No. 46/2008 on 18.6.2015 in the name of Rafikul Islam S/O Jahanuddin Sk. of village Milannagar, Santipur, P.S & Dist. – Goalpara and that *Ext. Z (1)* was the signature of the (then) Head Master, Sanatan Talukdar, which she recognized and *Ext. Z (2)* was the counter-signature of the (then)

Sub-Inspector of Schools, Sadar Circle, Goalpara and that as per the Admission Register his date of birth was 15.4.1996 and that she had brought the Admission Register. During her cross-examination, she had said, inter-alia, that she could not identify the signature of Ext. Z (2) and that she had not brought the Attendance Register and the Folio copy and he had completed his school in 31.12.2009 but the certificate was issued on 18.6.2015 and she could not say the reason behind issuing the certificate after six years.

It is seen from the evidence of the DW 5 that the Ext. Z was issued from their school and the Admission Register brought by the DW 5 shows the date of admission as 12.01.2008 and under Sl. No. 46, the name of the dependent, Rafikul Islam S/O Jahanuddin Sk. is found and his date of birth is shown to be 15.4.1996. After examining the Admission Register and the evidence of the DW 5, it can be considered that the dependent is the son of Jahanuddin Sk. who had studied in the Chandaria Pathar M. E. School, Goalpara and his date of birth is 15.4.1996.

From the above discussions it is found that the evidences of DW1, DW2, DW3, DW4 and DW5, when summed up together for discussion corroborates to the entries appeared in the admissible exhibits and appears to be trustworthy and hence, in my considered opinion, the dependents have succeeded to discharge their burden under Section 9 of the Foreigners Act, 1946.

Considering the materials on record and the discussions made herein this Tribunal is of the opinion that the Proceedee, Lt. Md. Jahanuddin Sheikh and his dependents, Ashad Ali and Rafikul Islam, are not illegal migrants of any stream.