

Rupajan Begum vs Union Of India on 5 December, 2017

Equivalent citations: AIR 2018 SUPREME COURT 210, 2018 (1) SCC 579, AIR 2018 SC (CIVIL) 1142, (2018) 5 ALLMR 482 (SC), (2018) 126 ALL LR 542, (2018) 3 CAL HN 219, (2018) 4 CIVLJ 525, (2018) 3 MAH LJ 607, (2018) 2 MPLJ 625, (2017) 14 SCALE 103, (2018) 181 ALLINDCAS 76 (SC), 2018 (2) KCCR SN 123 (SC), (2018) 4 BOM CR 817

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Bench: Rohinton Fali Nariman, Ranjan Gogoi

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.20858 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.13256 OF 2017]

RUPAJAN BEGUM . . .APPELLANT(S)

VERSUS

UNION OF INDIA & ORS. . .RESPONDENT(S)

WITH

CIVIL APPEAL NO. 20862 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.13259 OF 2017]

CIVIL APPEAL NO. 20859 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.13260 OF 2017]

CIVIL APPEAL NO. 20861 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.13258 OF 2017]

CIVIL APPEAL NO.20860 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION

(CIVIL) NO.12647 OF 2017]

CIVIL APPEAL NO.20863 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.13257 OF 2017]

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CIVIL APPEAL NO.20864 OF 2017
[ARISING OUT OF SPECIAL LEAVE PETITION
(CIVIL) NO.28935 OF 2017]

SPECIAL LEAVE PETITION (CIVIL) NO.16441 OF
2017

J U D G M E N T

RANJAN GOGOI, J.

SPECIAL LEAVE PETITION (CIVIL) NO.16441 OF

1. List the Special Leave Petition (Civil) No.16441 of 2017 separately. SPECIAL LEAVE PETITION (CIVIL) NOS.13256/2017, 13259/2017, 13260/2017, 13258/2017, 12647/2017, 13257/2017 AND 28935/2017

2. Leave granted in Special Leave Petition (Civil) Nos.13256/2017, 13259/2017, 13260/2017, 13258/2017, 12647/2017, 13257/2017 and 28935/2017.

3. The challenge in this group of appeals is to an order of the Gauhati High Court dated 28th February, 2017 by which document No.xiii (i.e. Certificate issued by the Secretary of the Village Panchayat and countersigned by the local revenue official in respect of females who have migrated to other villages after marriage or such certificates issued by jurisdictional circle officers in respect of urban areas) mentioned in the 'illustrative list of documents admissible' as a supporting document has been held by the High Court to be invalid in law and hence of no effect in the process of verification of claims for inclusion in the NRC. The High Court had passed the aforesaid order in a writ proceeding [i.e. Writ Petition (Civil) No.2634 of 2016 (Monowara Bewa @ Manora Bewa Vs. The Union of India & Ors.)] wherein the validity of an order of the Foreigners Tribunal holding the writ petitioner – Monowara Bewa @ Manora Bewa to be a foreigner was in question. The High Court found the contentions advanced in the writ petition to be without any merit and substance and the order of the Tribunal, on the materials before it, holding the writ petitioner – Monowara Bewa @ Manora Bewa to be a foreigner to be justified in law.

4. The writ petitioner – Monowara Bewa @ Manora Bewa in support of her claim to be an Indian citizen had additionally laid before the High Court a certificate issued by the Gaon Panchayat Secretary of the kind noticed above. The High Court could have and, in fact, had decided the writ

petition on the basis of the materials laid before the Tribunal without advertng to the aforesaid certificate and on that basis could have terminated the proceedings in question. However, the High Court took the view that the question of validity of the certificate issued by the G.P. Secretary is of considerable public importance and needed a resolution. Accordingly, the High Court after dismissing the writ petition on merits went on to answer the aforesaid question terming the same to be a “larger issue”.

5. As the opinion of the High Court holding the said certificate to be invalid has the potential of affecting a large number of persons who were not before the High Court a series of Special Leave Petitions have been filed by such persons before this Court challenging the aforesaid part of the order of the High Court. Leave to file Special Leave Petitions has been granted and the grievances raised have been heard.

6. The Appeal arising out of the Special Leave Petition filed by the aggrieved writ petitioner before the High Court i.e. Monowara Bewa @ Manora Bewa has also been entertained and heard along with the above group of appeals.

7. We have heard the learned counsels for the parties.

8. A reading of the order of the High Court would go to show that according to the High Court the document in question was a means to facilitate a claim for inclusion in the NRC by reference to a document which is post 24th March, 1971 i.e. cut off date on the basis of which citizenship under Section 6A of the Citizenship Act, 1955 is required to be determined. The High Court took the view that all the other documents listed in the 'illustrative list of documents admissible' are prior to the cut off date and, therefore, there cannot be any special reason for inclusion of the said document i.e. contemporaneous G.P. Secretary certificate in the said list, even as a supporting document. In this regard, the High Court took the view that this Court in Sarbananda Sonowal Vs. Union of India¹ has held that the State of Assam is facing “external aggression” and “internal disturbance” on account of huge influx of illegal migrants and keeping in mind the seriousness of the problem the use of the document in question to establish citizenship for inclusion in the updated NRC cannot commend for acceptance. ¹ (2005) 5 SCC 665

9. The High Court also took the view that under the provisions of the Assam Panchayat Act, 1994 issuance of such certificate is not contemplated and/or authorized. Referring to the provisions of the Indian Evidence Act, 1872 the High Court was also of the opinion that as the said certificate is not issued by the G.P. Secretary on the basis of any official records, the same is not a 'public document' and, in fact, the said certificate partakes the character of a 'private document' issued by the G.P. Secretary. The evidentiary value of the same, therefore, is open to serious doubt. It is on the aforesaid broad basis that the High Court thought it proper to invalidate the certificate in question.

10. The invalidation of the certificate which was an agreed document in the matter of processing of claims for inclusion in the updated NRC undoubtedly has the effect of affecting a large number of claimants who may have filed their applications for inclusion in the NRC.

11. It may therefore be necessary to very briefly notice the circumstances in which the illustrative list of documents including the certificate of the G.P. Secretary appearing at Serial No.13 of the said list had come into existence.

12. A set of modalities for preparation of the NRC was formulated by the State Government through a Cabinet sub-committee. The sub-committee which was initially constituted on 3rd August, 2010 had been reconstituted from time to time. The modalities were discussed after several rounds of deliberations with various stakeholders including All Assam Students' Union ("AASU") and 26 Ethnic Unions as well as All Assam Minorities Students' Union ("AAMSU"). The list of documents were part of the aforesaid modalities which after being finalized by the State Government were sent to the Government of India on 5th July, 2013. The approval of the Union Government of the said modalities was communicated by a letter dated 22nd November, 2014 of the Union Home Secretary addressed to the Chief Secretary of the Government of Assam. After the aforesaid approval of the Union Home Secretary, the State Coordinator (NRC) informed the Registrar General of India of the decision of the Union Government and sought instructions of the said Authority, i.e., R.G.I. with regard to issuance of such certificates. This was communicated by a letter dated 9th April, 2015 of the State Coordinator. In response to the said letter, the R.G.I. by communication dated 5th May, 2015 approved the format of the certificate(s) to be issued by the G.P. Secretary/Executive Magistrate. Thereafter, the State Coordinator by a communication issued on the same day i.e. 5th May, 2015 informed all the Deputy Commissioners of the States of the decision of the R.G.I. and the approval of the format of the certificates that are to be issued by a G.P. Secretary in rural areas and Executive Magistrate in the urban areas for married women migrating to a new place on account of marriage. The required protocol to be followed in issuing such certificates was also communicated by the said letter of the Coordinator dated 5th May, 2015.

13. From the above it would appear that the list of illustrative documents including the G.P. Secretary certificate were agreed to by all stakeholders in the process of updation of the NRC and the same also had the approval of the Union Government as well as the State Government pursuant to which instructions were issued to the district level officers in the matter of issuance of such certificate in tune with the required protocol.

14. The exercise in question was undertaken by the High Court to consider an issue not strictly arising in the proceedings before it. Resolution of the issue was not indispensable for answering the writ petitions under consideration of the High Court. The issue had the potential of affecting the large number of citizens who were not before the High Court. No notice under the provisions of Order I rule 8 of the Code of Civil Procedure, 1908 was also issued to enable the persons likely to be affected to contest the matter in a representative capacity. Though, the order of the High Court insofar as the issue of the validity of the certificate is liable to be interdicted on the above basis alone, we are of the view that we should proceed further in the matter and record our views on the issue of validity of the certificate in question to dispel all doubts in the matter and to avoid any further litigation on the issue.

15. The certificate issued by the G.P. Secretary merely acknowledges the shifting of residence of a married woman from one village to another. The said certificate by itself and by no means

establishes any claim of citizenship of the holder of the certificate. This is made clear in the illustrative list of documents itself by specifying the same to be only a supporting document. The certificate in question only enables its holder to establish a link between the holder and the person from whom legacy is claimed. It has been made clear in the several reports of the learned State Coordinator, NRC, Assam that a claim accompanied by such a certificate, without details of the legacy person, is to be discarded and in the event information as to the legacy person has been furnished, the certificate in question is to be used for the limited purpose of providing a linkage after due enquiry and verification.

16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.

17. The above apart, from a conjoint reading of the provisions of the Assam Panchayat Act, 1994 i.e. Sections 19(1)

(vi), 21 and 122, it would appear that directions for issuance of such certificate can come within the ambit of the jurisdiction of the authorities under the Act in which event the view taken by the High Court and the contentions advanced on behalf of the State that the said document is a 'private document' would be legally fragile.

18. For all the aforesaid reasons we set aside the order of the High Court insofar as the invalidity of the certificate issued by the G.P. Secretary is concerned and allow the present appeals to the above limited extent. We make it clear that the certificates issued by the G.P. Secretary/Executive Magistrate will however be acted upon only to establish a linkage between the holder of such certificate and the person(s) from whom legacy is being claimed. The certificate will be put to such limited use only if the contents of the certificate are found to be established on due and proper enquiry and verification.

19. Civil Appeal arising out of Special Leave Petition (Civil) No.12647 of 2017 will now be listed before the appropriate Bench for disposal on merits so far as the order of the High Court holding the writ petitioner – appellant (i.e. Monowara Bewa @ Manora Bewa) to be a foreigner is concerned.

.....,J.

(RANJAN GOGOI)J.

(ROHINTON FALI NARIMAN) NEW DELHI DECEMBER 5, 2017