

GAHC010048682023



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1544/2023

BISHNU BARMAN @ BISHNU CHANDRA BARMAN @ PRADIP KUMAR
BARMAN
S/O- LATE SHIBEN CHANDRA BARMAN @ SHIBEN BARMAN, R/O- 5 NO.
PATTA, HARMOTI, P.O. MERBIL, MOUZA AND P.S. LALUK, DIST.
LAKHIMPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF INDIA, THE
MINISTRY OF HOME AFFAIRS, GRIHA MANTRALAYA, NEW DELHI.

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI-781005.

5:THE DEPUTY COMMISSIONER
LAKHIMPUR
P.O. AND DIST. LAKHIMPUR

ASSAM
PIN- 787001.

6:THE SUPERINTENDENT OF POLICE (BORDER)

LAKHIMPUR
P.O. AND DIST. LAKHIMPUR
ASSAM
PIN- 787001

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Date : 07-03-2024

JUDGMENT & ORDER (CAV)

(M Thakuria, J)

Heard Mr. F. A. Hassan, learned counsel for the petitioner. Also heard Mr. S. S. Roy, learned Central Government Counsel for the respondent No.1; Mr. J. Payeng, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2 & 6; Mr. T. Pegu, learned Standing Counsel, Election Commission of India for the respondent No.3 as well as Mr. P. Sarma, learned Additional Senior Government Advocate, Assam for the respondent No.5.

2. On being referred by the Superintendent of Police (Border), Lakhimpur, North Lakhimpur, Assam vide District No.22/97, the learned Member, Foreigners' Tribunal 1st, Lakhimpur, North Lakhimpur registered a case being numbered as F.T.(1st) Case No.4056/2011 and after hearing both the parties and considering the evidence adduced by the petitioner passed the impugned final order/opinion dated 11.03.2022 declared him to be a foreigner under the Foreigners' Act, 1946, who had illegally entered into the territory of India (Assam) from the specified territory of Bangladesh on or after 25.03.1971 without any valid document.

3. Being aggrieved and dissatisfied with the said impugned final order/opinion dated 11.03.2022,

noted above, the petitioner has filed this writ petition on 16.03.2023.

4. It is the contention of the petitioner that he is an Indian citizen by birth and born at Village-Dakhin Panialguri, District Alipurduar, West Bengal and he belongs to Rajbongshi Community who were the original inhabitants of the country. He studied upto Class-IV at Majherdabri H/A Primary School, Alipurduar and in this respect, District Primary School Sansad, Jalpaiguri has issued a Certificate on 13.01.2016. The petitioner also stated that in some document his name was recorded as Pradip Kumar Barman and as such, the petitioner has sworn an affidavit on 14.01.2016 declaring that Bishnu Chandra Barman, Pradip Kumar Barman and Bishnu Barman are one and same person. The petitioner also stated that his projected father Lt. Shiben Chandra Barman @ Shiben Barman had purchased a plot of land at Village- Dakhin Panialguri, District Jalpaiguri, West Bengal by a registered Sale Deed dated 04.10.1957 and he also casted vote under 11 No. Alipurdaur LAC, West Bengal. It is further contended by the petitioner that for earning his livelihood, he shifted to Harmoti, District Lakhimpur, Assam in the year 1974 to carry out his tailoring business with a Trade Permission Certificate obtained from the Gaon Panchayat authority (Exhibit-III) and he is permanently residing there with his family till date. In this respect, a Permanent Resident Certificate (in short PRC) has been issued by the Deputy Commissioner, Lakhimpur on 07.05.2016 (Exhibit-II). He has also casted vote under Nouboicha LAC and has been issued with Voters Identity Card (Exhibit-I), PAN Card and Aadhar Card.

5. The learned counsel for the petitioner, Mr. F. A. Hassan submits that after receipt of the summon, the petitioner appeared before the learned Foreigners Tribunal 1st, Lakhimpur, North Lakhimpur and filed his written statement on 05.11.2015 along with the relevant documents i.e. the land document of his projected father; the School Certificate which was issued in his name; the Permanent Resident Certificate issued by the Deputy Commissioner, Lakhimpur; the Trade Permission Certificate as well as Voters Identity Card etc. to prove himself to be the citizen of India and to discharge his burden under Section 9 of the Foreigners' Act, 1946. In spite of placing all the relevant documents, that were not objected by the State, Mr. Hassan, learned counsel submitted that the learned Member, Foreigners' Tribunal 1st, Lakhimpur, North Lakhimpur, Assam failed to appreciate the relevant materials and evidence adduced by the petitioner on record in its true perspective and arrived at a wrong findings by declaring the petitioner as a foreigner of post 1971 stream.

6. In this regard, Mr. J. Payeng, learned Standing Counsel, Home Department, Assam has submitted that the documents submitted by the petitioner were not sufficient to prove himself to be the Citizen of

India. He also submits that the petitioner/proceedee failed to submit any document regarding his residence in Assam prior to 1971. The petitioner is not fully aware about his date of birth or date of death of his parents/grandparents and thus, there is no requirement to adduce any rebuttal evidence by the State. In addition to his submission, he relied on the decision rendered by the Hon'ble Supreme Court in the Case of *Sarbananda Sonowal vs. Union of India & Anr.*, reported in (2005) 5 SCC 665, and emphasized on paragraph No. 26 of the said judgment, which reads as follows:

“26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like under Section 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

7. Mr. Payeng, learned Standing Counsel, Home Department, further submitted that the PRC which is produced by the petitioner/proceedee cannot be considered as a document to prove his citizenship, as the same has been merely issued by the Deputy Commissioner, Lakhimpur, North Lakhimpur only to prove that he is the resident of that locality and not his citizenship. He also submits that the petitioner has failed to procure the document to prove that his parents and grandparents cast vote in Assam prior to 1971 nor any residential certificate.

8. He also submits that the petitioner has not mentioned the name of his mother or his grandparents etc or anything in details about his family members in his written statement which accordingly raises doubt in regards to the veracity of the case of the petitioner. In support of his submission, he relies on the decision passed by this Court in the case of *Asiya Khatun vs. Union of India & Ors.* reported in 2017 (1) GLT 163, wherein, it has been held that failure to disclose material facts in the written statement by itself will raise a serious question mark on the citizenship of the proceedee. He also relies on another decision passed by this Court in the case of *Rashminara Begum vs. Union of India & Ors.* reported in 2017 (4) GLT 346, wherein, it has been held that “*mere production and marking of document as exhibit cannot be held to be due proof of its contents. Its execution has to be proved by*

admissible evidence”.

9. Thus, Mr. Payeng stated that the petitioner failed to establish any link with his projected grandparents and parents and also could not produce any document to establish himself to be an Indian Citizen and accordingly, he failed to discharge his burden under Section 9 of the Foreigners' Act, 1946. Hence, there is no reasons to make any interference in the impugned opinion dated 11.03.2022 passed by the learned Member, Foreigners' Tribunal 1st, Lakhimpur, North Lakhimpur, which has been passed by appreciating the evidence on record.

10. We have perused the case records as well as the exhibited documents placed by the petitioner before the Tribunal to prove his nationality and also heard the submissions made by the learned counsels for both the sides.

11. It is the contention of the petitioner that he is an Indian citizen by birth and born and brought up at Village—Dakhin Panialguri, District—Alipurduar, West Bengal and in this respect, he has submitted one Sale Deed regarding a plot of land purchased by his projected father. Further, it is the case of the petitioner that he shifted to village, Harmoti, Lakhimpur, North Lakhimpur, Assam along with his family members to earn his livelihood and till date he is residing permanently in the same village.

12. In support of the case, the petitioner has produced/exhibited the following documents before the learned Member, Foreigners' Tribunal 1st, Lakhimpur, North Lakhimpur:—

- a) Exhibit-I Photostat copy of Elector Photo Voter Identity Card (EPIC) of the petitioner in the name of Shiben Barman.
- b) Exhibit-II Photostat copy of PRC in the name of the petitioner.
- c) Exhibit-III Photostat copy of Trade Permission letter.

13. Thus, the petitioner based on above referred documents/exhibits Nos. 1, 2 and 3 and also annexed one photocopy of Sale Deed to prove his citizenship. But, he failed to exhibit other documents and relied his entire case on the above referred documents/exhibits. It is seen that the Exhibit-I is the Voter Card issued in the name of the petitioner, but, the said voter card is not at all sufficient to prove that he is a citizen of India. Also there is no other document to prove that his parents or grandparents or other family members cast vote prior to 1971.

14. Coming to the Exhibit-II i.e., the PRC issued by the Deputy Commissioner, Lakhimpur also cannot be considered as a relevant document to prove the citizenship of a person. It may help to prove that he is the permanent resident of the locality concerned. The Exhibit-III is only a Trade Permission

letter to carry out the business within the concerned locality and apart from that the said certificate cannot be considered as a relevant or authentic certificate to prove the citizenship of the petitioner/proceedee.

15. In this regard, Mr. Hassan, learned counsel for the petitioner has submitted that the petitioner has other relevant documents to prove himself to be the citizen of India and accordingly, he prays for, remanding back the matter before the concerned Tribunal by giving the opportunity to the petitioner to prove himself to be the citizen of India.

16. However, the certiorari jurisdiction of writ under Article 226 is being supervisory and not an appellate jurisdiction, this Court while exercising the certiorari jurisdiction under Article 226 of the Constitution has no such authority to review or remand the matter to the Tribunal for reconsideration. Further, it is not a case that the learned Tribunal did not consider the relevant document/evidence produced by the petitioner, rather, it is seen that the learned Foreigners Tribunal 1st, Lakhimpur, North Lakhimpur had discussed the case in detail in regard to the evidence as well as the relevant document that were exhibited by the petitioner/proceedee.

17. In this regard, the Hon'ble Apex Court in the case of *Central Council for Research in Ayurvedic Sciences & Anr Vs. Bikartan Das & Anr* reported in 2023 SCC Online SC 996, have held that:-

"54. Relying on T.C. Basappa (*supra*), the Constitution Bench of this Court in the case of Hari Vishnu Kamath (*supra*), laid down the following propositions as well established:

(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous."

18. Thus, it is seen that the proceedee could not produce any document to prove his linkage with his projected father or projected grandfather nor could produce any document to prove his citizenship. He only furnished a land purchased certificate of West Bengal of the year 1957 to establish his link with his projected father. Further, there is no other document of his siblings/uncles, grandparents/parents that they have cast vote prior to 1971 to prove himself to be the citizen of India. We found that there is no other document to establish him to be an Indian citizen and thereby, he failed to discharge his burden

under Section 9 of the Foreigners' Act, 1946 to prove himself to be the Indian citizen.

19. From the discussions made herein above, we find that the learned Foreigners Tribunal 1st, Lakhimpur, North Lakhimpur has correctly appreciated the entire facts and evidence of the case and arrived at a correct and just decision holding the petitioner to be a foreigner of post 1971 stream. Accordingly, we find that there is no perversity or any illegality in the impugned judgment/ opinion dated 11.03.2022, passed by the learned Member, Foreigners' Tribunal No. 1st, Lakhimpur in F.T.(1) Case No.4056/2011 (District No.22/97) requiring any interference with it. Therefore, the present writ petition, being devoid of merit, stands dismissed.

20. The interim order passed earlier in this proceeding on 11.10.2023, stands vacated/hereby recalled.

21. Registry shall return the records of the F.T.(1st) Case No.4056/2011 (District No.22/97) to the Foreigners' Tribunal, 1st, Lakhimpur, North Lakhimpur Assam forthwith along with a copy of this order.

22. Registry shall also forward copy of this order to the Superintendant of Police (Border) of District Lakhimpur, North Lakhimpur, Assam forthwith for its information.

23. In terms of above, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant