

GAHC010031042022



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

Case No. : Review.Pet./35/2022

SAFARA BEGUM @ SAPARA BEGUM @ CHAPARA BEGUM
W/O ISLAM UDDIN
D/O LATE ABDUL KARIM
VILLAGE RANIRPAR, PO JADUTILLA, PS AND DIST KARIMGANJ, ASSAM,
788720

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR GUWAHATI 781006

3:THE DEPUTY COMMISSIONER
KARIMGANJ
ASSAM 788710

4:THE SUPERINTENDENT OF POLICE (B)
KARIMGANJ ASSAM 788710

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI 110001

6:THE STATE CO ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC) ASSAM
78103

Advocate for the Petitioner : MR H R A CHOUDHURY, MR J M SULAIMAN, MR. A M AHMED
Advocate for the Respondent : ASSTT.S.G.I., SC, ECI, SC, F.T, SC, NRC

– B E F O R E –
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing : 20.03.2024

Date of Order : 20-08-2024

JUDGMENT & ORDER (CAV)

(NELSON SAILO, J)

Heard Mr. J M Sulaiman, learned counsel for the review petitioner/writ petitioner, Mr. J Payeng, learned Standing Counsel, Home Department for respondent Nos. 2 & 4, Mr. A I Ali, learned Standing Counsel, Election Commission of India for respondent No.5 and Mr. P Sarma, learned Addl. Senior Government Advocate, Assam for respondent No. 3.

[2.] The instant review petition has been filed by the review petitioner (petitioner) seeking review of the Order dated 05.09.2018 passed by this Court in WP(C) No. 5466/2016 by invoking Article 226 of the Constitution of India.

[3.] Aggrieved with the Order dated 29.07.2016 passed by the Foreigners Tribunal-1, Karimganj in FT Case No. 1868/2012 (*State Vs. Smt. Safara Begum*) declaring the petitioner to be a foreigner, who had illegally entered India (Assam) from Bangladesh after 25.03.1971, the petitioner filed WP(C) No. 5466/2016 before this Court. This Court, upon hearing the parties and upon perusal of the records of the case, dismissed the writ petition vide Order

dated 05.09.2018.

[4.] Against the order of dismissal of the writ petition, the petitioner approached the Hon'ble Supreme Court by filing SLP (Civil) Diary No. 40275/2019. The SLP was accompanied by I.A No. 193102/2019 for condonation of delay in filing and IA No. 193104/2019 for condonation of delay in refiling/curing the defects and also by I.A No. 193105/2019 seeking permission to file additional documents/facts/Annexures. The SLP was, however, dismissed as withdrawn vide Order dated 08.01.2020 with liberty to the petitioner to file review before this Court. The petitioner, thereafter, on 16.02.2022 filed the instant review petition.

[5.] Mr. J.M. Sulaiman, learned counsel for the petitioner submits that review of the Order dated 05.09.2018 is being sought by the petitioner because of the fact that there are errors apparent on the face of the record. He submits that due to financial hardship and Covid-19, the petitioner could not approach this Court after the Order dated 08.01.2020 was passed by the hon'ble Supreme Court.

[6.] The learned counsel submits that the petitioner was born around 1973 at village Routhgram under Karimganj Police Station in the then district of Cachar and now Karimganj district, Assam. For better prospect, the father of the petitioner shifted to Rongpur after 1990 and since then, his family members have been residing there. The father and mother of the petitioner are Adul Karim @ Ang Karim and Rahima Bibi. Her father is no more but mother is alive. The grandfather of the petitioner is late Kuti Mia who had three children viz; Abdul Majid, Sorbul Bibi and the petitioner's father and they all are no more. The petitioner has four (4) siblings viz; Reja Begum, Rashid Ahmed, Jubera Khatun and Nomina Begum. The

petitioner got married on 18.07.1995 with Islam Uddin, S/o. Kutub Ali at village Ranirpar under Ratabari Police Station in the district of Karimganj, Assam by executing *Kabin Nama* (marriage document). The Secretary of Bhairab Nagar Gaon Panchayat issued a Certificate for the purpose of NRC updation to the petitioner on 02.07.2015 which was countersigned by the Circle Officer, Ramkrishna Nagar Revenue Circle, Karimganj certifying that the petitioner is the daughter of late Abdul Karim and got married on 18.07.1995 with Islam Uddin, S/o late Kutub Ali of Ranirpar, Karimganj district, Assam. The said Secretary again issued another Certificate to the petitioner on 05.02.2016 certifying that she is the daughter of late Abdul Karim and Rahima Bibi of village Rongpur under the Police Station of Ramkrishna Nagar in the district of Karimganj, Assam.

[7.] The learned counsel submits that the name of the petitioner appeared in the voters list of 1994 along with her parents for the first time under 01-Ratabari (SC) Legislative Assembly Constituency (LAC) in the district of Karimganj, Assam. The name of her father, mother, uncle and others appeared in the voters list of 1966 at village Routhgram, PS - Karimganj under 07-South Karimganj LAC. Her father's name also appeared in the voters detail of 1970 at village - Routhgram-2 under 07 - South Karimganj LAC and again his name, her mother and others in the voters list of 1977 at village - Routhgram- 2, under 05- Badarpur LAC Cachar district, now Karimganj district.

[8.] That the learned counsel for the petitioner submits that the name of the petitioner appeared with her husband in the Voters List of 2005, 2010 and 2011 but the petitioner was marked as 'D' voter at village Ranigram under South Karimganj LAC i.e., her matrimonial address. Thereafter, the name of the petitioner appeared along with her husband in the

Voters List of 2012 and 2016 but the petitioner was not marked as 'D' voter. The learned counsel submits that the petitioner obtained Electoral Photo Identity Card issued by the Electoral Registration Officer on 10.01.2013. The nationality of her parents, siblings and other family members who are similarly situated has never been questioned but the petitioner has been singled out and her nationality has been questioned.

[9.] The learned counsel further submits that the petitioner's father purchased a plot of land from one Siddeque Ali, S/o. Mobeswar Ali and accordingly, the Sub-Registrar, Ratabari in the erstwhile district of Cachar registered a Sale Deed in favor of the petitioner's father vide Deed No. 657 dated 01.03.1979. The name of the petitioner's grandfather is also clearly mentioned in the Sale Deed. However, despite relying upon all these documents, the learned Tribunal rendered its opinion against the petitioner, which was again confirmed by this Court. The learned counsel therefore submits that the instant Review Petition is filed by the petitioner seeking review of the order dated 05.09.2018 passed by this Court on the grounds mentioned in the Review Petition.

[10.] Mr. J. Payeng, learned counsel for the Home Department, on the other hand, submits that a review petition has to be filed within a period of 30 days from the date of the order sought to be reviewed. However, in the instant case, it has taken the petitioner almost two (2) years to file the instant review petition after she withdrew the SLP. He submits that the petitioner has not explained as to when she approached the Hon'ble Supreme Court against the Order dated 05.09.2018 and why she could not file the review petition soon after withdrawing the SLP on 08.01.2020 and why she filed the same only on 16.02.2022. He also submits that after passing of the Order dated 05.09.2018 in the writ petition filed by the

petitioner, the petitioner had two options namely; to approach the Hon'ble Supreme Court through the SLP or file a review petition before this Court. The petitioner chose to file the SLP before the Supreme Court and the delay in filing the SLP or curing the defect in the SLP appears to have not been condoned and therefore, delay in filing the instant review petition has to be reckoned w.e.f., 05.09.2018. The learned counsel submits that despite the inordinate delay in filing the instant review petition, the petitioner has not filed a separate application seeking condonation of delay and that she has only made some statements in the review petition which cannot by any means be construed as sufficient cause and explanation. Therefore, the review petition should be dismissed on grounds of inordinate delay and laches.

[11.] Mr. J. Payeng, learned counsel further submits that even on merit, the petitioner has to show that there is an error apparent on the face of the record or the petitioner despite due care and diligence could not bring certain relevant materials to the notice of the Court at the relevant time or the petitioner has to show that there are other sufficient reasons for reviewing of the Order dated 05.09.2018 which has close nexus with the first two principles governing review. The learned counsel submits that from a perusal of the review petition, the petitioner has failed to show that any of the three grounds exist for reviewing the Order dated 05.09.2018. The learned counsel submits that it is a settled position in law that the grounds of review are very limited and that the review petition cannot be filed in the guise of an appeal. He submits that all the points raised by the petitioner in his review petition has already been argued before this Court by the petitioner through his counsel at the relevant time and therefore, the review petition should be rejected and dismissed. In support of his submission, Mr. J Payeng relies upon under the following authorities:-

- (1) *Vedanta Limited vs. Goa Foundation & Ors., (2021) 7 SCC 206.*
- (2) *Kamlesh Verma vs. Mayawati & Ors., (2013) 8 SCC 320*
- (3) *Central Council for Research in Ayurvedic Sciences vs. Bikartan Das & Ors., (2023) SCC Online SC 996.*
- (4) *S Madhusudhan Reddy vs. V Narayana Reddy & Ors., (2022) SCC Online SC 1034.*

[12.] Mr. A.I. Ali and Mr. P. Sarma, learned counsels for respondent Nos. 5 and 3 respectively adopt the argument of Mr. J Payeng, learned counsel and they submit that the review petition is hit by delay and laches and is without any merit and the same should be dismissed.

[13.] We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record. The writ petition was disposed of vide Order dated 05.09.2018 and the petitioner, thereafter, approached the Supreme Court by filing SLP (Civil) Diary No. 40275/2019. However, on the prayer of the petitioner, the SLP was dismissed as withdrawn vide Order dated 08.01.2020 with liberty to the petitioner to approach this Court for review of the Order dated 05.09.2018. After the passing of the Order dated 08.01.2020 by the Supreme Court, the petitioner filed the instant review petition only on 16.02.2022. There is no separate application for condonation of delay but reliance has been made on the statements made in the review petition stating that the delay was due to financial crisis and due to COVID-19. From the cause-title of Order dated 08.01.2020 by which the SLP was dismissed as withdrawn and liberty given to the petitioner to file review, it appears that there were some defects in the SLP filed by the petitioner and for which, he had also filed Interlocutory Application seeking condonation of delay in re-filing or curing the defects. However, no order has been produced before us showing that the delay was

condoned or the defects were cured and therefore, it appears that without there being any condonation of delay in re-filing or curing the defects, the SLP was withdrawn by the petitioner on 08.01.2020. We, therefore, notice that time taken for filing the instant review petition, from the date of the order dated 05.09.2018 is almost three and a half years and can be calculated as 1228 days after deducting 30 days which is the period of limitation for filing a review petition.

[14.] Considering the delay, the explanation given by the petitioner for filing the review petition only on 16.02.2022 in the review petition is rather casual and inadequate. The same cannot be accepted as sufficient cause to persuade us to condone the delay. However, notwithstanding our view that there is inordinate delay in filing the instant review petition, we deem it proper to examine the review petition on merit.

[15.] The review petitioner has taken as many as 12 grounds for seeking review of the Order dated 05.09.2018 i.e., ground (a) to (l). We shall now examine the grounds taken as follows:-

(i) In ground No. (a), the petitioner has stated that the writ petition was dismissed merely on trivial technical ground without going into the merit of the case by not interfering with the order of the Tribunal. That the Court ought to have set aside the opinion and remanded the matter back to the Tribunal for a fresh decision considering the economic and social condition of the petitioner. We are afraid the same cannot be a ground for reviewing an order which otherwise was passed after taking into account all the relevant materials on record into consideration.

(ii) In ground No. (b), the petitioner contends that though the documents of citizenship were available with the petitioner but her counsel did not produce the same properly at the time of hearing and therefore, the Tribunal rejected the pleadings made in the petition and that the family members of the petitioner being illiterate were not fully aware of the legal proceedings. The petitioner by filing the instant Review Petition has sought for review of the order dated 05.09.2018 passed by this Court in WP(C) No. 5466/2016. However, from the ground taken by the petitioner under consideration, it appears as if the petitioner is seeking review of the opinion rendered by the Tribunal. This apart, if the petitioner indeed had documents of citizenship, which she could not produce before the Tribunal for whatever reason, she could have produced the same before this Court when the writ petition was being considered so that this Court upon appreciating such documents may have considered sending the matter back to the Tribunal concerned for fresh consideration. However, no such documents were produced before this Court when the writ petition was being considered and even in the instant Review Petition.

(iii) Ground Nos. (c) & (d) are being taken together for consideration since the contents are one and the same. The petitioner claims that she exhibited the Voters List of 1966, 1970 & 1977 wherein, her father's name appeared. She also exhibited the Gaon Panchayat Transfer Certificate issued by the concerned Secretary counter signed by the Circle Officer, Ramkrishna Nagar Revenue Circle, Karimganj. She exhibited the Sale Deed dated 01.03.1979 and her Kabin Nama to establish her linkage with her father. Despite the same, the Tribunal came to the conclusion that the petitioner failed to produce sufficient documents to establish her linkage and rendered its opinion against the petitioner. It may be stated herein again that the

instant Review Petition is not a petition seeking review of the order of the Tribunal but the order dated 05.09.2018 dismissing the writ petition. Therefore, the question of examining the opinion of the Tribunal once again will not arise.

At the cost of repetition, this Court while disposing the writ petition had taken into consideration all the documents that was produced and relied upon by the petitioner before the Tribunal. Though the petitioner filed NRC extract of 1951 as Exhibit-1, the same was not accepted as it was not proved and it was a computer generated statement without authentication by the competent authority. Besides this, NRC 1951 was prepared on the basis of Census Act, 1948 and as per Section 15 of the said Act, no entry in the census or record of census can be used as a piece of evidence. Such being the position, entry in the NRC 1951 was considered to have no evidentiary value. Exhibit-2 which is a certified copy extract of the Voters List of South Karimganj Assembly Constituency for the year 1966 with the sole voter Ang Karim, S/o. late Kuti Mia aged 30 years and Exhibit-3, also a certified copy extract of the Voters List of South Karimganj Assembly Constituency for the year 1970 with the sole voter Abdul Karim S/o. Kuti Mia aged 34 years were compared with Exhibit-5 and Exhibit-9. Exhibit-5 is a certified copy extract of Voters List of 1994 in respect of Ratabari Assembly Constituency with the sole voter Safara Begam D/o. Abdul Karim aged 21 years. Exhibit-9 is a certified copy extract of the Voters List of 1997 of Ratabari Assembly Constituency showing two (2) voters, namely, Abdul Karim S/o. Kuti Mia aged 50 years and Ruhima Bibi W/o. Ang Karim aged 40 years. From Exhibit – 9, one can infer that Ruhima Bibi being the wife of Ang Karim could be the mother of the petitioner, but her name does not figure in any Voters List before the list of 1997 (Exhibit-9). In Exhibit-9, Abdul Karim was 50 years of age in 1997 and

for which his year of birth would have been 1947. He would be 19 years of age in 1966 and would not have been eligible to vote in the year 1966 but as per Exhibit-2, which is the Voters List of 1966, Ang Karim was shown as 30 years of age, which is quite a contradiction.

The petitioner also claims to be born in 1973 and if such is the case, her mother's presence should have been traceable at least to the year 1972. In the Voters List of 1970 (Exhibit-3), there is no presence of the mother of the petitioner and nothing has been stated in the written statement or in the evidence as to when her parents got married. Therefore, under such circumstance, it was held that Exhibits - 2, 3, 5 & 9 cannot be relied upon to prove the citizenship of the petitioner.

The Sale Deed dated 01.03.1979 exhibited as Exhibit-4 was executed between Abdul Karim and Siddique Ali, after the cut-off date of 25.03.1971. There is no disclosure as to what has happened to the land thereafter, from the evidence of the petitioner and therefore, this Court held that the same cannot be relied upon. Exhibit-7 stated to be *Kabin Nama* (marriage document) indicating marriage between Islam Uddin and Safara Begam was also not proved in accordance with law and therefore not accepted as evidence to prove the petitioner's citizenship.

The two (2) Certificates dated 12.07.2015 and 05.02.2016 issued by the Secretary of Bhairabnagar Gaon Panchayat certifying that Safara Begam was the daughter of Abdul Karim and W/o. Islamuddin were also considered by this Court but it was found to have not been proved in accordance with law by the author of the Certificates. The Apex Court in *Rupajan Begum -Vs- Union of India* reported in (2018) 1 SCC 579 held that such certificates will have

to be subjected to two (2) stage verification viz; on its authenticity and secondly, on the truthfulness of the contents of the certificate. Therefore, in absence of any such process, Court found the same to be not acceptable as proof of the citizenship of the petitioner.

(iv) In ground Nos. (e), (f) & (g) once again, the petitioner has taken the grounds as if the order of the Tribunal is sought to be reviewed. Since the same has already been dealt with in the preceding paragraphs, the same is not being repeated for brevity.

(v) In respect of ground Nos. (h), (i), (j), (k) & (l), it may be seen that the grounds taken by the petitioner cannot be considered to be grounds for review in view of the fact that the petitioner was given due opportunity to establish her citizenship before the Tribunal as well as before this Court when the writ petition was being considered. Unless, the petitioner is able to show that there is an error apparent on the face of the record or the petitioner despite due diligence the petitioner was not able to produce certain materials/documents at the time of passing of the order sought to be reviewed, the review of the order passed by the Court cannot be granted on a mere asking.

[16.] In the case of Kamlesh Verma (supra), the Apex Court in deciding the said case held that the review will not be maintainable on a repetition of old and overruled argument and review proceedings cannot be equated with original hearing of the case amongst others. Paragraph Nos. 20, 20.1 & 20.2 may be abstracted hereunder:-

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulse Athanasius AIR 1954 SC 526 to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

[17.] From the above abstract, it may be seen that unless any of the three conditions as set out in Order 47 Rule 1 are met, review will not be maintainable. Moreover, sufficient reason would mean a reason sufficient on grounds at least analogous or akin to those specified in the rule. The petitioner in the present case has failed to fulfill any of the conditions in order to persuade us to review the Order dated 05.09.2018.

[18.] In the case of *Central Council for Research in Ayurvedic Sciences & Anr.* (supra), although the case was as to whether the respondents therein were entitled to enhancement of their retirement age from 60 to 65 years as applicable to the AYUSH doctor working under the Ministry of AYUSH, the Apex Court formulated and laid down two cardinal principles of law governing exercise of extraordinary jurisdiction under [Article 226](#) of the Constitution, more particularly, when it comes to issue of Writ of Certiorari. Paragraph Nos. 51 & 52 which is relevant to the subject may be gainfully abstracted hereunder:--

“51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under [Article 226](#) of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high

prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

[19.] From the above abstract, it may be seen that the Apex Court has held that a Writ of Certiorari being a high prerogative writ should not be issued on mere asking. The High Court when it comes to issuance of Writ of Certiorari does not exercise the powers of appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. Only when the order is passed without jurisdiction or is culpably erroneous can the High Court exercise its powers but does not substitute its own views with those of the Tribunal.

[20.] Coming to the present case, it may be seen that this Court in examining the information rendered by the inferior Tribunal had only observed the principles of law laid down by the Apex Court as abstracted above. In other words, this Court did not find any error committed by the Tribunal in rendering its opinion dated 29.07.2016 in FT Case No. 1868/2012.

[21.] A Full Bench of this Court in *State of Assam & Ors. –Vs- Moslem Mondal & Ors.*

reported in *2013 (1) GLT 809* by referring to a number of Apex Court's decisions observed amongst others that a review bench while hearing the review petition cannot re-appreciate the evidence and reject the findings of the earlier bench, which otherwise is within the domain of the appellate court. In other words, a review petition cannot be allowed to be an appeal in disguise.

[22.] In the case of *S. Madhusudhan Reddy* (supra), the Apex Court by referring to various decisions of the same Court on the subject reiterated the principles governing or the grounds available for filing a review application as set out in Order 47 of the CPC. The Apex Court observed that it was a settled law that in the exercise of review jurisdiction, the Court cannot re-appreciate the evidence to arrive at a different conclusion even if two views are possible in the matter. Further, under the garb of filing a review petition, a party cannot be permitted to repeat old and overruled arguments for reopening the conclusions arrived at in a judgment. The power of review is not to be confused with the appellate power which enables the Superior Court to correct errors committed by a subordinate Court. The principle laid down by the Apex Court squarely applies to the present case. The petitioner in the present review petition has failed to show any error that is apparent on the face of the record or that some new documents or important matter or evidence which after exercise of due diligence was not within her knowledge could not be produced by her at the time when the order sought to be reviewed was passed. There is also no sufficient reason or reasons shown to compel this Court to review the Order dated 05.09.2018.

[23.] Thus, upon due consideration of the review petition in its entirety, we find that the grounds for review raised by the petitioner has already been duly considered and answered by this Court while passing the Order dated 05.09.2018 and therefore, under the given facts

and circumstances, we find no merit in the review petition.

[24.] The review petition is accordingly dismissed on limitation as well as on merit.

[25.] Copy of this order be forwarded to the Foreigners Tribunal-1, Karimganj as well as to the Superintendent of Police (Border), Karimganj, Assam for their information.

JUDGE

JUDGE

Comparing Assistant