

GAHC010016492020



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

Case No. : WP(C)/474/2020

ABIDA BEGUM
D/O ANTAB ALI, W/O CHAND MIYA, R/O VILL. MANDIA PATHGAR, P.S.
BAGHBAR, DIST. BARPETA, ASSAM,

VERSUS

THE UNION OF INDIA AND 5 ORS.
TO BE REP .BY THE SECRETARY GOVT. OF INDIA DEPTT. OF HOME
AFFAIRS, NEW DELHI, INDIA

2:THE STATE OF ASSAM
TO BE REP.BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
TO BE REP BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN ASHOKA ROAD
NEW DELHI
INDIA

4:THE NATIONAL REGISTER OF CITIZEN
TO BE REP .BY THE STATE CO-ORDINATOR
ASYUT PLAZA
BHANGAGRAH
KAMRUP (M)
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
BARPETA
DIST. BARPETA
ASSAM

6:THE DEPUTY COMMISSIONER
BARPETA
DIST. BARPETA
ASSAM

7:INVESTIGATION OFFICER
UNDER BAGHBAR POLICE STATION
DIST. BARPETA
ASSA

Advocate for the Petitioner : Mr M U Ahmed, MR FAIZUL HOQUE,MR. S H ZAMAN

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,SC, ECI,SC, NRC

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 11.11.2024
(K.R. Surana, J)

Heard Mr. M.U. Ahmed, learned counsel for the petitioner. Also heard Mr. M.R. Adhikari, learned CGC for respondent no.1; Mr. J. Payeng, learned standing counsel for Home Department, representing respondent nos. 2, 5 and 7; Mr. H. Kuli, learned counsel, appearing on behalf of Mr. A.I. Ali, learned standing counsel for respondent no.3 and Mr. R. Talukdar, learned Govt. Advocate, appearing for respondent no.6. For reasons best known to the State Government, it seems to have abandoned respondent no.6 though it is an establishment under it as there is no representation for respondent no.6.

2) The petitioner, namely, Abida Begum, who has been declared to be a foreigner who has illegally entered into India (Assam) post 25.03.1971 stream vide opinion dated 14.06.2019, passed by the learned Foreigners' Tribunal No.4th, Barpeta in F.T. Case No. 59/2017 and F.T. Case No. 1043/2016

[arising out of Ref: IM(D)T Case No. 414/B/98], has assailed the same by filing this writ petition under Article 226 of the Constitution of India.

3) It may be mentioned that F.T. Case No. 59/2017 and F.T. Case No. 1043/2016 were amalgamated vide order dated 27.12.2017, passed by the learned Tribunal.

4) After appearing before the learned Tribunal, the petitioner had submitted her written statement in the proceeding on 11.10.2017. Thereafter, the petitioner had submitted her evidence-on-affidavit on 19.01.2018 as DW-1, and the following documents were exhibited, viz., (i) certified copy of electoral roll of 1966 (Ext.A); (ii) certified copy of electoral roll of 1970 (Ext.B); (iii) certified copy of electoral roll of 1997 (Ext.C); (iv) certified copy of electoral roll of 2010 (Ext.D); (v) certified copy of electoral roll of 2016 (Ext.E); (vi) *Gaonbura's* certificate of village- Satrakanara-6 (Ext.F).

5) It is seen that though the proceeding was fixed for cross-examination on 21.05.2018, but as per the order-sheet available in the Tribunal's record, it has been mentioned that the petitioner had been examined on 21.05.2018. The record, however, does not disclose whether the examination was by the learned Tribunal or whether the petitioner was cross-examined by the Govt. Pleader/ Advocate. Moreover, no oath seems to have been administered before oral examination on 21.05.2018.

6) The petitioner had also examined Antab Ali, her projected father as DW-2 by filing his evidence-on-affidavit on 12.07.2018. He had re-exhibited Ext.A to Ext.F and had also exhibited his elector photo identity card as Ext.G. Similar to DW-1, it is seen that though the proceeding was fixed for cross-examination on 29.10.2018, but as per the order-sheet available in the Tribunal's record, it has been mentioned that the DW-2 had been examined on

29.10.2018 and discharged. The record, however, does not disclose whether the examination was by the learned Tribunal, or the petitioner was cross-examined by the Govt. Pleader/ Advocate. Moreover, no oath seems to have been administered before oral examination of DW-2 on 29.10.2018.

7) On 21.02.2019, the petitioner had examined Jader Ali, the *Gaonbura* as DW-3, which was recorded on oath. He had exhibited the *Gaonbura's* Certificate (Ext.F) and his signature thereon as Ext.F(I) and his identify card was exhibited as Ext.F(II). Though Ext.F contained State symbol of "Lion Capital of Asoka", which otherwise makes the document inadmissible, there was no cross-examination of DW-3 on that point.

8) Be that as it may, in so far as improper use of State Emblem is concerned, we may refer to the decision of this Court in the case of *Sultana Begum v. Union of India and others*, W.P.(C) No.7115/2016, decided on 20.11.2018, has held as follows:

".....We would observe that the Central Government has framed statutory rules called State Emblem of India (Regulation of Use) Rules, 2007 (in short the Rules), in exercise of powers conferred by Section 11 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 (in short the Act). Section 3 of the Act specifically prohibits improper use of the state emblem. It says that notwithstanding anything contained in any other law for the time being in force, no person shall use the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government or the State Government, without the previous permission or authorization. This section starts with a non-obstante clause, meaning thereby that it has overriding effect over all the laws for the time being in force. Rule 5 of the Rules provides that use of the official emblem is restricted to the authorities specified in Schedule-I. Rule 10 makes the restriction more specific. It says that no person, including former Ministers, former Members of Parliament, former Members of Legislative Assemblies, former Judges and retired Government officials (other than those authorized under the Rules) shall use the emblem in any manner. Sub-rule (2) of Rule 10 clearly provides that no Commission or Committee, Public Sector Undertaking, Bank, Municipal Council,

Panchayati Raj Institution, Non-Government Organization, University (other than those authorized under the Rules) shall use the emblem in any manner. Schedule-I to the Rules contains a list of constitutional and statutory authorities, Ministries and Departments of the Central Government, State Governments or Union Territory Administrations and other Government functionaries which may use the emblem."

9) In the light of the law laid down in the aforesaid writ petition, which has been followed in many cases, including the case of *Diluwara Khatun v. Union of India & Ors.*, 2019 (1) GLT 382, the said *Gaonbura's* certificate dated 23.06.2016 (Ext.F), issued by DW-3 with State Emblem embossed on the top of it, cannot be considered as a valid and acceptable document. The State Emblem being improperly and unauthorisedly used in the instant case by the *Gaonbura*, and the same is in clear violation of the aforesaid Act and the Rules, as explained in the case of *Sultana Begum (supra)*, the said *Gaonbura's* Certificate (Ext.F) is inadmissible in evidence. Any document or certificate issued by an authority using the State Emblem, who are otherwise not authorized to use the State Emblem under the Act and the Rules are inadmissible piece of evidence and therefore, no reliance can be placed on such document.

10) However, the learned Tribunal has rejected all the remaining exhibits, i.e. Ext.A to Ext.G on the ground that there were discrepancies in the age and name of the petitioner's projected grand-parents.

11) In para-13 of the impugned opinion, the learned Tribunal has recorded as follows – "... But O.P. to substantiate her claim projected one *Antab Ali* as her father. Interestingly, O.P. neither pleaded in her written statement nor in his evidence-on-affidavit pleaded or denied about the name of *Antab Ali*." However, in para-6 of the written statement, the petitioner has specifically pleaded that her father's name is *Antab Ali*. Moreover, in para-4 of her evidence-on-affidavit, the petitioner as DW-1 has specifically stated that her father's name

was Antab Ali. The said Antab Ali was examined as DW-2 and in his oral examination, his evidence that the petitioner is his daughter could not be demolished. The records of the Tribunal contains the office copy of the notice/summons issued to the petitioner discloses that same was issued to Abida Begum, wife of Chan Miah. In the cause title of the impugned opinion, which is available in the record, the petitioner Abida Begum is stated to be wife Chan Miah in FT Case No. 57/17 and she is referred to as Abeda Begum, son of San Mia in connection with FT Case No. 1043/16. The copy of notice does not disclose and/or has no mention that a copy of Form-2 of the Enquiry Report where in paragraph-13, the petitioner is referred to as daughter of Altab Ali was accompanying the summons. There is no order sheet which discloses that a copy of Form No.2, i.e. the Enquiry Report of Suspected Foreigner was served on the petitioner. Therefore, this is a clear case where the learned Member has based its finding on a document which was never provided to the petitioner. Moreover, this is a clear case where the learned Member, Foreigners' Tribunal has misread and misconstrued the pleadings and evidence on record, where the petitioner has made a positive statement that her father's name of Altab Ali, the Court is of the considered opinion that the petitioner had no guilty to plead that Altab Ali was not her father. Accordingly, the misreading and misconstruing of the written statement and evidence on affidavit filed by the petitioner where she has disclosed that the name of her father was Altab Ali is held to have vitiated the opinion impugned in this writ petition owing to perverse finding.

12) It may be mentioned that while the learned counsel for the petitioner has cited the case of *Md. Rahim Ali @ Abdur Rahim v. The State of Assam & Ors., 2024 INSC 511: (2024) 0 Supreme(SC) 575*, the learned standing counsel for the Home Department had cited the case of *Central Council for Research in Ayurvedic Sciences & Anr. v. Bikartan Das & Ors., 2023 INSC 733*,

and *State of Assam & Ors. v. Moslem Mandal, 2013*) 1 GLT 809, but in light of the discussions above, those have no application under the facts of the present case in hand. Accordingly, no purpose would be served to discuss those cases.

13) For the reasons as discussed herein before, as the impugned opinion of the learned Foreigners' Tribunal is found to have been vitiated by misreading and misconstruing the pleadings and evidence on record, specifically with regard to the projected father of the petitioner, the Court has no hesitation to set aside the impugned opinion dated 14.06.2019, passed by the learned Foreigners' Tribunal No.4th, Barpeta in F.T. Case No. 59/2017 and F.T. Case No. 1043/2016 [arising out of Ref: IM(D)T Case No. 414/B/98]. Resultantly, the matter is remanded back for a fresh opinion by the learned Tribunal in accordance with law.

14) The petitioner is on bail vide order dated 24.03.2021. The said bail shall stand extended till 30.11.2024, by which time the petitioner shall appear before the Foreigners' Tribunal No.4th, Barpeta in connection with F.T. Case No. 59/2017 and F.T. Case No. 1043/2016 [arising out of Ref: IM(D)T Case No. 414/B/98], and await for further directions from the said learned Tribunal. On failure of the petitioner to appear before the learned Tribunal within the time allowed would result in automatic revoking of the order of bail by afflux of time and thereupon, it would be open to the Superintendent of Police (Border), Barpeta to secure the presence of the petitioner before the learned Tribunal for rendering fresh opinion in the presence of the petitioner.

15) The Registry shall return the records of the herein before referred proceeding back to the said learned Tribunal.

16) Moreover, before parting with the record, we also take note of the fact that the proceeding was taken up by the learned Tribunal on 15 (fifteen)

dates between 16.06.2017 to 21.05.2019. However, except in the impugned opinion, the presence of A.G.P. (Assistant Govt. Pleader) is not recorded in any of the daily orders including orders passed on the dates referred herein before, when DW-1 and DW-2 were orally examined and DW-3 was cross-examined. Moreover, not a single appearance memo of the learned A.G.P. is found on the record of the proceeding. Thus, a question arises as to whether the learned Member, Foreigners' Tribunal 4th, Barpeta acted as a prosecutor and the Judge in the said proceeding. We hope that the State Government in the Home Department would examine if the said question requires to be pondered upon and whether it is necessary for the State to take appropriate remedial measures. Moreover, we also leave it to the State to take a decision whether it would be in the best interest of the State to have regular programs for the Members of the Foreigners Tribunal in the State for upgrading their adjudicatory skills. We therefore, request the learned standing counsel for the Home Department to send a copy of this order to the concerned authority who is in-charge of Foreigners' Tribunal matters.

JUDGE

JUDGE

Comparing Assistant