

GAHC010009662020



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

**Case No. : WP(C)/562/2020**

MULUKJAN BIBI @ MULLIKJAN NESSA  
D/O- LATE PABAN ALI @ PARAN ALI, W/O- AMZAD ALI, VILL NO.2  
KANDHBARI, P.O- KANDHBARI, P.S- MUKALMUA, DIST- NALBARI, PIN-  
781126

VERSUS

THE UNION OF INDIA AND 6 ORS  
REP. BY THE MIN OF HOME AFFAIRS, NEW DELHI, PIN- 110001

2:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM  
HOME DEPTT  
DISPUR  
GUWAHATI- 781006

3:THE DEPUTY COMMISSIONER  
NALBARI  
DIST- NALBARI  
ASSAM  
PIN- 781138

4:THE ELECTION COMMISSION OF INDIA  
NEW DELHI- 110001

5:THE STATE COORDINATOR  
NRC  
ASSAM  
GUWAHATI- 781005

6:THE SUPERINTENDENT OF POLICE (B)  
NALBARI

ASSAM

7:THE OFFICER IN CHARGE  
MUKALMUA POLICE STATION  
DIST- NALBARI  
PIN- 78113

**Advocate for the Petitioner : MR H R A CHOUDHURY**

**Advocate for the Respondent : ASSTT.S.G.I.**

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

**ORDER**

**Date : 04-04-2024**

**(*Susmita Phukan Khaund, J.*)**

1. The extra-ordinary jurisdiction of this Court has been sought to be invoked by filing this application under Article 226, read with Article 227 of the Constitution of India, by challenging the opinion rendered vide impugned order dated 06.09.2019, passed by the Foreigners Tribunal No. 2, Nalbari, in FT (Nal-2) Case No. 26/2015. By the impugned order, the petitioner who was the proceedee before the learned Tribunal has been declared to be a foreigner of post-25.03.1971 stream.

2. This is a subsequent proceeding. Earlier, another FT Case was instituted against her being Case No. FT (Nal-2) MUK-II/26 of 2015, at Foreigners Tribunal-2, Nalbari, Mukalmua wherein notice was issued on 07.09.2015. In said FT (Nal-2) MUK-II/26 of 2015 the learned Foreigners Tribunal No. 2, Nalbari by the order dated 08.01.2016 declared the petitioner as genuine Indian citizen by descent,. Thereafter the same Foreigners Tribunal No. 2, Nalbari on

11.07.2019, again issued notice to the petitioner and directed her to appear before it, as the Superintendent of Police (Border) had forwarded a reference, being FT No. 137/2017, by expressing doubt about her nationality. The reference was made by the SP (Border), Nalbari, Assam, vide FT No. 137/2007, against the petitioner giving rise to the aforementioned FT (Nal-2) Case No. 26/2015.

3. As per requirement under Section 9 of the Foreigners Act, 1946 (Foreigners Act, for short), the proceedee-petitioner herein, filed reply on 30.09.2015, along with certain documents to prove that she is not a foreigner. The learned Tribunal after considering the facts and circumstances of the case, held that the proceedee-petitioner had failed to discharge the burden cast upon her and accordingly, the opinion was rendered declaring the petitioner to be a foreign national of post-25.03.1971 stream.

4. It was opined by the learned Tribunal that the Secretary of 16 No. Kandhbari-Dakpara Gaon Panchayat, who had issued the Exhibit-5, was not examined as a witness by the proceedee, to prove the veracity of the contents of the same and thereby through the said Exhibit, the petitioner failed to prove that Late Paban Ali was her father.

5. It was held that the discrepancies in the evidence adduced by the petitioner as well as the other witnesses including the OPW-2, failed to establish any linkage of the petitioner with Paban Ali. It was held by the learned Tribunal that the petitioner's name was traceable only upto the Voters List of 1977 (Exhibit-2), which is not sufficient to hold that she is a citizen of India. It was held that she had failed to discharge her burden that her parents were genuine citizens of India by descent and by birth and they were not foreigners.

6. Heard Ms H Ahmed, learned counsel for the petitioner, Mr J Payeng, learned Standing Counsel, Home Department, Assam, Mr H Kuli, learned counsel, appearing on behalf of Mr A I Ali, learned Standing Counsel, Election Commission of India and Mr P Sarma, learned Additional Senior Government Advocate, Assam.

7. It is apt to mention at this juncture that vide order dated 28.05.2019, in WP(C) (Suo Moto) No. 3/2018, a coordinate Bench of this Court had overturned the opinion dated 08.06.2016, passed by the learned Foreigners' Tribunal No. 2, Nalbari, in FT (Nal-2) MUK-II/26 of 2015, wherein the proceedee-petitioner herein was declared as an Indian citizen. Vide order dated 28.05.2019, passed in WP(C) (Suo Moto) No. 3/2018, it was held by this Court that the disposal order in the aforementioned case, i.e., FT (Nal-2) MUK-II/26 of 2015, shall have no legal consequences and shall not be acted upon by the Superintendent of Police (Border), Nalbari, as well as by the Deputy Commissioner, Nalbari observing further that all the twelve references including FT (NAL-2) Muk-II/26 of 2015 shall not be treated as pending references. Thus, the order of the learned Foreigners Tribunal No. 2, Nalbari dated 08.01.2016 declaring the petitioner as 'not a foreigner', was set aside.

8. Reverting back to this instant case, it is submitted on behalf of the petitioner that her grandfather's name is Late Abbas Ali and her grandmother's name is Late Obarjan Nessa and they were citizens of India by birth. Late Khaimuddin, Late Naimuddin, Late Khaban Uddin and Late Paban Ali @ Paran Ali (petitioner's father), were siblings and children of Late Abbas Ali and Late Obarjan Nessa. The petitioner's father's name is Late Paban Ali @ Paran Ali and the petitioner's mother's name is Late Kaduhanu @ Late Kadarjan. The petitioner's siblings are shown as-

- i) Sukurjan Bibi,
- ii) Late Meherjan Bibi,
- iii) Mulukjan Bibi (petitioner),
- iv) Anowara Bibi and
- v) Sadar Ali.

9. The petitioner's husband is Amzad Ali, Son of Late Hekmad Ali of village No. 2, Kandhbari, under Mukalumua Police Station, in the district of Nalbari and since her marriage, she has been residing with her husband and they are blessed with five children.

10. It is further submitted on behalf of the petitioner that she was born in the year 1978 and was brought up at Village No. 2, Kandhbari under Mukalmua Police Station. It is further submitted that the petitioner could prove that she is an Indian citizen and the learned counsel for the petitioner has referred to the evidence-in-affidavit of three witnesses including the petitioner's evidence and the following documentary evidence:-

- i) Voters List of 1966 (Exhibit-1)
- ii) Voters List of 1997 (Exhibit-2)
- iii) Voters List of 2014 (Exhibit-3)
- iv) Elector Photo Identity Card (Exhibit-4)
- v) Certificate of Gaon Panchayat Secretary (Exhibit-5)

vi) Certificate of the Gaonburah (Exhibit-6)

11. The learned counsel for the petitioner tried to establish the linkage of the petitioner with her father and grandparents through the documentary as well as oral evidence, adduced by the petitioner before the learned Tribunal. It is further submitted that the confusion arose because the script in Assamese and Bengali has diverse pronunciation and 'Paban' is pronounced contrastively as 'Paran'.

12. *Per contra*, Mr J Payeng, learned Standing Counsel, Home Department has categorically refuted the stance of the petitioner. It is submitted that the petitioner has failed to discharge her burden as mandated under Section 9 of the Foreigners Act. The learned Standing Counsel has submitted that the petitioner has failed to prove that she is an Indian citizen despite the fact that several documents were relied upon to establish the linkage of the petitioner and her projected father.

13. The remaining part of the submissions of both the sides will be discussed at the appropriate stage.

14. An individual can prove that he/she is not a foreigner under Section 6-A of the Citizenship Act, 1955 and as per Section 9 of the Foreigners Act. The law is well settled that under these Acts the burden of proof is always on the proceedee and never shifts. Section 9 of the Foreigners Act, reads as under:-

***"9. Burden of proof.—***

***If in any case not falling under section 8 any question arises with reference to this Act or any order made or direction given thereunder,***

***whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person....”***

15. It is contended by the learned counsel for the petitioner that the documents have not been properly appreciated and in a nonchalant manner, the learned Tribunal has rejected the documents, holding the proceedee-petitioner herein, to be a foreigner of post-25.03.1971 stream. The records of the FT (Nal-2) 26/2015, are scrutinized. Annexure-9/Exhibit-1 is the Voters List of 1966, which reflects the name of Paran Ali, as son of Abbes Ali. His age is shown as 25 years and his address is shown as House No. 62, Madhyam Barkhetri Mouza of No. 2, Bhelengimari Gaon, under the District of Kamrup (Guwahati Mahkuma) of 61 Hajo LAC.

16. It has already been explained by the petitioner through her written statement (WS, for short) that Paran Ali, in Bengali is pronounced as Paban Ali in Assamese, as 'ର' is pronounced as 'Ra' in Bengali. Through this argument, the petitioner tried to justify that the name of her father is shown as Paban Ali in the voters list of 1993 (Annexure-10 of the petition). After scrutinizing the Exhibit-1 in the case record of the case of Case No. FT (Nal-2) Case No. 26/2015, it is noticed that Paban Ali's name is printed as Paban Ali and not Paran Ali. The Annexure-10, i.e., the voters list of 1993 was not exhibited before the learned Tribunal by the petitioner. The voters list of 1997 was exhibited by the petitioner, while adducing evidence before the learned Tribunal. The petitioner's name appears for the first time in the voters list of 1997. Her age is shown as 19 years and her residence is shown as House No. 42, District-

Nalbari, Sub-Division-Nalbari, under No. 60 Barkhetri LAC, Police Station-Mukalmua, Mouza-Madhyam Barkhetri, Part-46. At that time, the petitioner was already married to Amzad. This explains the shifting of the petitioner to another residence. There is not even a remote linkage of the petitioner with her father Paban Ali or Paran Ali. The Exhibit-3, i.e., the voters list of 2014, can be ignored.

17. The petitioner produced the OPW-2 as a witness. Rahmat Ali deposed as OPW-2 that the petitioner is known to him and her father's name was Paban Ali. The petitioner's father was known to him since he (OPW-2) was 10/12 years old. The petitioner's marriage was solemnized with Amzad Amir about 18/19 years ago.

18. Khushnur Ali is the Gaonburah In-charge of Kandhbari Village, Lat No. 7. He deposed as a witness that Late Paban Ali was the father of the petitioner. He had issued a certificate in favour of the petitioner. The petitioner was a co-villager and she was known to him since her childhood, as the petitioner was his neighbour. Since his childhood, the petitioner's father was known to him. The petitioner's father died about 20 years ago. The petitioner's birthplace is the Village-Kandhbari. Her husband Amzad Ali is the son of Hikmat Ali. His house is near the petitioner's house.

19. The evidence of the witnesses produced by the petitioner was not very helpful. Mere statement is not sufficient to assert that the petitioner's father was an Indian citizen. They have stated in a matter of fact manner that the petitioner's father, Late Paban Ali was known to them, as both the witnesses are from Kandhbari Village. Their statements cannot be considered as cogent and concrete evidence. The onus is on the petitioner to prove her citizenship with cogent, reliable and acceptable evidence.

20. It is also apt to mention that Exhibit-5 relied upon by the petitioner as a linkage certificate was not proved by the Secretary of No. 60 Kandhbari-Dakpara Gaon Panchayat, who had issued the certificate, i.e., Exhibit-5. It has been appropriately held by the learned Tribunal that the contents of Exhibit-5 was not proved in accordance with law and no reliance can be placed on Exhibit-5.

21. In the wake of the foregoing discussions, it is held that the petitioner could show her name reflected in the Voters List of 1997, Exhibit-2, but failed to establish any linkage with her projected father, Paban Ali apart from exhibiting the Voters List of 1966. The voters list of 1997 does not reflect the name of the petitioner's projected father. The other documents exhibited by the petitioner cannot be relied upon and the voters list of 2014 is not required to be considered at all. It is a settled proposition of law that staying for a prolonged period and appearance of names in the voters list does not entitle a person citizenship without the person discharging his or her burden as mandated by Section 9 of the Foreigners Act. It is held that the petitioner has failed to discharge her burden as per Section 9 of the Foreigners Act, 1946. There is no document tracing back the petitioner's legacy to the 1966 voters list.

22. There appears to be no irregularity in the order dated 06.09.2019 passed by the Foreigners Tribunal No. 2, Nalbari in FT(Nal-2) Case No. 26/2015, impugned by the present petitioner-proceedee and as such the same does not call for any interference as per our opinion.

23. Before parting with this record, it is apt to mention that vide order of this Court dated 27.05.2020, the petitioner was accorded interim protection. In view of our above decision the respondents are now directed to take appropriate steps pursuant to the opinion of the

learned Foreigners Tribunal No. 2, Nalbari dated 06.09.2019, in connection with the case No. FT (Nal-2) Case No. 26 /2015.

24. Petition is dismissed as the petition is bereft of merits.

25. Registry shall return the records to the Foreigners Tribunal No. 2, Nalbari along with a copy of this order.

**JUDGE**

**JUDGE**

**Comparing Assistant**