



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

Case No. : WP (C) 3194/2017

1. Smti. Minu Das,
D/O Late Gopal Das, W/O Sri Nikhil Das,
R/O Village-Panpurghat, P/S-Jamugurihat,
District- Sonitpur, Assam.

Petitioner

-Versus-

1. The Union of India,
Through the Ministry of Home Affairs,
Griha Mantralaya, New Delhi.
2. The State of Assam,
Through the Secretary To The Govt. of Assam,
Home Deptt.,
Dispur,Guwahati-6.
3. The Deputy Commissioner, Sonitpur,
P/O-Tezpur 784001,
District- Sonitpur, Assam.
4. The Superintendent of Police (Border),
Sonitpur, P/O-Tezpur 784001,
District- Sonitpur, Assam.

Respondents

Advocate for the Petitioner : Mr. S.C. Biswas.

Advocate for the Respondent(s) : Mr. U.K.Goswami,CGC.
Mr. J. Payeng, SC, Home Deptt.
Mr. P. Sarma, Sr. GA, Assam

Date of judgment : 19-08-2024

**BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. S.C. Biswas, learned counsel appearing for the petitioner and Mr. U.K. Goswami, learned Central Government Counsel for the respondent No.1. Also heard Mr. J. Payeng, learned Standing Counsel, Home Department, Assam for the respondent No. 2, as well as Mr. P. Sarma, learned Additional Senior Government Advocate, Assam for the respondent No.3.
- 2.** This writ petition has been filed by the petitioner, namely, Smt. Minu Das impugning the opinion/order, dated 15.03.2017, passed by the learned Foreigners Tribunal No. 6, Tezpur at Sootea in the Case No. F.T.C.(6) 17/2015, whereby, she was declared as a Foreigner, who entered into India (Assam) after 25.03.1971.
- 3.** By order dated 31.05.2017, passed in this case, this Court issued notice to the respondents and the case record of Case No. F.T.C.(6)17/2015 was called for from the Foreigners

Tribunal No. 6 Tezpur at Sootea and the petitioner was given interim protection from being deported from India until further orders.

4. On perusal of the case records of F.TC.(6)17/2015, it reveals that initially the reference was made against the petitioner under the Illegal Migrants (Determination by Tribunals) Act, 1983, (*hereinafter referred to as IMDT Act*) by the Superintendent of Police (Border), Sonitpur, Tezpur to the Chairman, Illegal Migrants Determination Tribunal, Tezpur suspecting the petitioner to be an illegal migrant, i.e. a foreigner, who had unauthorisedly entered into India (Assam) from the specified territory, i.e. present Bangladesh, after 25.03.1971. Later on, after striking down of the IMDT Act, 1983 by the Hon'ble Supreme Court in the Case of "*Sarbananda Sonowal –vs- Union of India and Another,*" reported in (2005) 5 SCC 665 and as per the direction of the Hon'ble Apex Court passed therein, the said case was transferred to the Foreigners Tribunal No. 6 Tezpur, at Sootea.

5. After registration of the case, the Foreigners Tribunal No. 6 Tezpur, Sootea issued notice to the proceedee (petitioner) on 18.08.2015 and she personally appeared before the said Tribunal on 27.08.2015. On 04.09.2015, the petitioner had filed written statement in support of her case, along with the relevant documents.

6. In her written statement, the petitioner had stated that she was born and brought up at village Bhurbandha, Nanke, Mouza-Laukhowa in the district of Nagaon, Assam. She stated that her father, namely Gopal, son of Girish, was also the resident of said locality and that her grandfather and father cast votes in the year 1971 and their names were enlisted in the voter list of 1971 at Serial Nos. 725 and 729 respectively of 90 No. Kaliabor Legislative Assembly Constituency. The petitioner has also stated that she got married with one Shri Nikhil Das of Village-Pasigaon, under Jamugurihat Police Station and had cast vote in the year 1997 from 75 No. Sootea Legislative Assembly Constituency at Centre No. 63, Part No. 62 and her name has been shown at Serial No. 34 against house number 62 of the voter list of 1997. She has also stated that to show her linkage with her father, namely Gopal Das she has submitted a certificate issued by the Circle Officer, wherein it is mentioned that she is the daughter of late Gopal Das.

7. To substantiate her contention that she is an Indian citizen by birth, the petitioner had adduced the evidence of two witnesses namely herself as DW-1 and one Shibash Das as DW-2. The petitioner exhibited the following documents during her deposition before the learned Foreigners Tribunal No. 6 Tezpur, Sootea–

- (i) Exhibit-A, Voter List of 1971;

- (ii) Exhibit-B, Voter List of 1997;
- (iii) Exhibit-C, Certificate issued by the Circle Officer, Tezpur Revenue Circle;
- (iv) Exhibit-D, Electoral Photo Identity Card of Sri Shibash Das; and
- (v) Exhibit-E Voter List of 1965.

8. While deposing as DW-1, the petitioner/proceedee Smt. Minu Das deposed before the Foreigners Tribunal, that her father late Gopal Das, son of late Girish Das was a resident of Bhurbantha Nanke, Mouza-Laukhowa, Nagaon, Assam and that she was born and brought up in the said place. She has also deposed that after attaining maturity, she got married to Sri Nikhil Das son of late Ramesh Das of village-Pasigaon, Mouza-Bhurbantha, in the district of Sonitpur, Assam and after her marriage she has been residing in the village of her husband. She has exhibited three documents as mentioned in Paragraph No. 7 of this judgment as Exhibit -A, B and C. During her cross-examination, she had stated that she does not have any other documents apart from what she had produced before the learned Foreigners Tribunal.

9. The DW-2, Shibash Das has deposed that the petitioner Minu Das, is the daughter of his younger brother. He has also deposed that the petitioner Minu Das was born and brought up at Tezpur. He has also deposed that she was married to Nikhil Das of Panpurghat and after her marriage, she has been staying at Panpurghat under Jamuguri Police Station. DW-2 has

also deposed that he has been casting his vote regularly from 89 No. Kaliabor, LAC Part No. 55 and he exhibited two documents i.e., Electoral Photo Identity Card as Exhibit-D and the Voter List of 1965 as Exhibit-E.

10. Learned counsel for the petitioner has submitted that the testimony of DW-1 and DW-2 shows that the petitioner/proceedee is the daughter of late Gopal Das, resident of Bhurbandha Nanke, Mouza-Laukhowa in the district of Nagaon, Assam and the Exhibit-A which is the voter-list of 1971 also shows the name of the father of the petitioner, namely, Gopal against Serial No. 726 of the said voter-list.

11. It is also submitted by the learned counsel for the petitioner that the Exhibit-C, which is the certificate issued by the Circle Officer, Tezpur, Sadar Revenue Circle also shows that the petitioner Smt. Minu Das, is the daughter of late Gopal Das and Tarubala Das.

12. Learned counsel for the petitioner submitted that the Tribunal had committed a manifest error by misreading the evidence on record and arriving at a wrong conclusion that the petitioner is a foreigner. He has also submitted that the petitioner has discharged her burden under Section 9 of the Foreigners Act, 1946, which could not be dislodged or rebutted by the prosecution side, therefore, the finding of the Tribunal

suffers from fundamental flaw and same is liable to be interfered with by this Court.

13. On the other hand, Mr. J. Payeng, learned Standing Counsel, Home Department, Assam has submitted that the Tribunal had rightly appreciated the evidence on record and reached the correct conclusion on the basis of evidence available on record.

14. The learned Standing Counsel, Home Department, has submitted that though the DW-2 has claimed to be the uncle of the petitioner, however, in her written statement filed before the Tribunal, the petitioner has stated nothing about DW-2 and not mentioned that she had an uncle by the name of Shibash Das.

15. The learned Standing Counsel, Home Department, has also submitted that the testimony of DW-1 and DW-2 are also contradictory on other material facts inasmuch as the petitioner, while deposing before the Tribunal as DW-1, had deposed that she was born and brought up at Bhurbandha Nanke, Mouza-Laukhowa, under Nagaon District of Assam, whereas, the DW-2, who claimed to be her uncle, has deposed in his testimony that the petitioner was born and brought up at Tezpur. The learned Standing Counsel, Home Department has submitted that this is a major contradiction in the testimony of DW-2, which makes his deposition unreliable of any credence.

16. Moreover, the learned Standing Counsel, Home Department has also submitted that the DW-2, namely, Shibash Das has claimed to be the elder brother of the father of the petitioner, namely, Gopal Das; however, in the voter list of 1971, which has been exhibited by the petitioner as Exhibit-A, name of said Shibash Das does not figure along with the father of the petitioner, Gopal Das, which makes the testimony of DW-2 unreliable.

17. The learned Standing Counsel, Home Department has also submitted that though the only link document which the petitioner has produced before the learned Foreigners Tribunal, Tezpur, is Exhibit-C, which is the certificate issued by Circle Officer of Tezpur Revenue Circle, however, the said certificate was not duly proved by the person, who issued the said certificate, i.e. the Circle Officer of the Tezpur Sadar Revenue Circle. Hence, it is submitted that the said certificate should not be relied up on.

18. The learned Standing Counsel contended that the Tribunal had rightly appreciated the evidence on record and thereafter, arrived at a finding of fact leading to the conclusion that the petitioner is a foreigner, who entered into India (Assam) after 25.03.1971. He, therefore, submits that there is no ground for interference in the opinion rendered by the Tribunal, which has been impugned in this case.

19. We have considered the submissions made by the learned counsel for both the parties and have gone through the materials available on record, including the original case record of F.T.C. No. (6)17/2015 which was requisitioned in connection with the instant case.

20. Section 9 of the Foreigners Act, 1946 mandates that the onus of proving citizenship of a person is upon that person who claims to be citizen of India. He has to do so by adducing admissible, cogent and reliable evidence.

21. In order to establish one's citizenship, normally a person may be required to give evidence of his or her date of birth, place of birth, name of his or her parents, place of birth and citizenship of his or her parents. Sometimes the place of birth and citizenship of grandparents may also be relevant.

22. All these facts would be necessarily within the knowledge of the person concerned and not to the authorities of the states, and therefore the person concerned is required to prove these facts by adducing admissible, cogent and reliable evidence. Before he can do so, it is necessary for such a person, to plead all these facts in his or her written statement, which is filed before the Foreigners' Tribunal in a reference case pending against him or her before such Foreigners' Tribunal. Thereafter, he/she shall have to adduce evidence on the facts pleaded by him or her in the written statement.

23. In the instant case, though the petitioner has stated in her written statement that she is the daughter of one Gopal, who is the son of Girish of village Bhurbandha Nanke, Mouza-Laukhowa, in the district of Nagaon, however, the only linked document which she has produced before the Tribunal during the proceeding is the Exhibit-C, wherein it has been stated that the petitioner Smt. Minu Das, daughter of late Gopal Das and late Tarubala Das, of ward number 12 under Tezpur Revenue Circle, got married to one Nikhil Das. The address of the petitioner and her parent in the said certificate is not the address which has been pleaded by the petitioner in her written statement. Moreover, though the aforementioned certificate was marked as Exhibit-C, same was not proved. The document marked as Exhibit-C and the contents thereof have to be proved by admissible evidence, i.e., by evidence of those persons who can vouchsafe for the truth of the fact in issue.

24. It is settled law that the documentary evidence would have to be proved on the basis of record and the contemporaneous record must substantiate and prove the content of such documents.

25. In the instant case, though the Exhibit-C has been shown to be issued by the Circle Officer, Tezpur Sadar Revenue Circle, however, neither the Circle Officer concerned nor any of the employees of the office of the said Circle Officer adduced

evidence to depose before the Tribunal to prove the Exhibit-C, i.e., the certificate wherein, the petitioner has tried to project late Gopal Das as her father.

26. As regards the oral testimony of DW-1 and DW-2 are concerned as discussed hereinabove, DW-2 who has claimed to be the uncle of the petitioner, has given contradictory testimony regarding the place of birth and place of upbringing of the petitioner, which makes his testimony unreliable. Moreover, apart from his oral testimony, there is no material on record to show that he is the elder brother of the father of the present petitioner.

27. It appears that apart from Exhibit-C, no other document has been exhibited by the petitioner to show her link with her projected father late Gopal Das, and as the petitioner has failed to prove Exhibit-C, the said documentary evidence cannot be relied upon.

28. Exhibit-D, which is the electoral photo identity card of Sri Shibash Das and Exhibit-E, which is the voter list of 1965, are of no help to the petitioner to prove her citizenship. Exhibit-A, which is the voter list of year 1971, in respect of Bhurbandha Nanke, Mouza- Laukhowa, in the district of Nagaon is also of no help to the present petitioner, as it contains the name of Gopal and Tarubala Das, whom the petitioner has projected to be her parents. However, the petitioner has failed to prove that Gopal

and Tarubala are her parents, as the only linked document produced by the petitioner, i.e. Exhibit-C, has not been proved by her as per law as discussed hereinabove.

29. As regards Exhibit-B is concerned, which is the voter list of year 1997 in respect of Batiamari, Panpurghat village under Jamugurihat police station, where the name of present petitioner and her husband Nikhil Das has been included, is also of no help. As because mere inclusion in the voter list, that too of 1997, is not a proof of the citizenship of the petitioner as she has failed to prove her linkage to her parents, whom she claimed to have been residing in Bhurbandha village before 1971.

30. Under above circumstance, we are of the considered opinion that the petitioner has failed to discharge her burden under Section 9 of the Foreigners Act 1946 to prove that she is not a foreigner but a citizen of India.

31. Thus, for the reasons discussed hereinabove, we do not find any merit in the instant writ petition, which is accordingly dismissed.

32. The interim order passed earlier on 31.05.2017 stand vacated/recalled.

33. The Registry shall send back the records of the Case No. F.T.C.(6) 17/2015, to the Foreigners Tribunal Court No. 6,

Sootea, District-Biswanath erstwhile District-Sonitpur along with a copy of this order. Also forward a copy of this order to the Superintendent of Police (Border), Biswanath for its necessary information.

JUDGE

JUDGE

Comparing Assistant