

GAHC010054442020



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

Case No. : WP(C)/1864/2020

RUMENA KHATUN
D/O- NABI HUSSAIN @ NABI, W/O-AZIZUR RAHMAN, VILL- ALISINGA
URIAMGURI, P.O- TEZPUR, P.S- TEZPUR, DIST- SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
MIN OF HOME AFFAIRS, REP. BY THE ASSTT SOLICITOR GENERAL OF
INDIA

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
DEPTT OF HOME
DISPUR
GUWAHATI- 06

3:THE SUPERINTENDENT OF POLICE (B)
CACHAR
SILCHAR
ASSAM
PIN- 788001

4:THE DEPUTY COMMISSIONER AND DISTRICT ELECTION OFFICER
SONITPUR
ASSAM
PIN- 788001

5:STATE COORDINATOR
NRC
ACHYUT PLAZA
BHANGAGARH
GUWAHATI- 781005

6:THE ELECTION COMMISSION OF INDIA
REP. BY THE DISTRICT ELECTION OFFICER
SONITPUR
ASSA

Advocate for the Petitioner : MR M J QUADIR, MR. K MIRA,MR S S ISLAM

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

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

Judgment and Order (CAV)

[Soumitra Saikia, J]

Date : 19-12-2024

Heard Mr. M.J. Quadir, learned counsel for the petitioner. Also heard Mr. A. Kalita, learned Standing Counsel, Foreigners Tribunal, Mr. H.K. Hazarika, learned Government Advocate, Assam, Mr. A.I. Ali, learned Standing Counsel, Election Commission of India and Ms. S. Baruah, learned CGC for the respondents.

2] This writ petition is directed against the impugned opinion dated 22.10.2019 passed by the learned Member, Foreigners' Tribunal, Tezpur(1st), Sonitpur, Assam in F.T. Case No.83/2017, whereby the Tribunal answered the reference against the petitioner in negative and held that the petitioner is a foreigner who entered India from the specified territory on or after 25th of

March 1971 without any valid document.

3] Pursuant to the notice being served, the petitioner appeared before the Tribunal and filed her written statements along with the necessary documents and also adduced evidence in support of the documents produced.

4] In the written statement the petitioner stated that Sadek Ali Munchif was her grandfather, Nabi Hussein @ Nabi and Ayesha as her parents. It was stated that petitioner was born at village Raj Bharal on 23.11.1981 and a school certificate in support thereof issued by the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur countersigned by the Assistant Inspector of Schools, Sonitpur District Circle, Tezpur was produced. It was stated that she was married to one Azizur Rahman son of Late Abdul Jabbar of Village Alisinga Uriamguri, Panchmile Gaon Panchyat of Tezpur Revenue Circle in Sonitpur. The petitioner's marriage was solemnized with Azizur Rahman when she was about 18 years old.

5] Before the Tribunal the petitioner exhibited as many as 8 (eight) exhibits which are as follows:

(i) Exhibit -A is the certified copy of electoral Roll of 1965 showing the name of Sadek Ali Munchif along with his family members under 77 number Tezpur LAC, Village- Raj Bharal, Mouza- Mahabhairab, Sub-Division-

Tezpur(Sadar) under serial No. 283, house No. 66 of Part 99.

(ii) Exhibit-B is the translated copy of the electoral roll of the year 1971 which reflects the projected names of the grandparents of the petitioner who are Sadak Alli Munchif, son of Jafar and Sahuran Nessa wife of Sadak Ali Munchif

(iii) Exhibit-C is the translated copy of electoral roll of 1989 which reflects the name of one Nabi Hussain, whom the petitioner claims to be her father and the name of one Ayesha Khatun, whom the petitioner claims to be her mother.

(iv) Exhibit-D is the translated copy of electoral roll of 1993 which reflects the name of one Nabi, whom the petitioner claims to be her father and the name of one Ayesha, whom the petitioner claims to be her mother.

(v) Exhibit-E is the translated copy of electoral roll of 2010 where the name of one Nabi Hussain, son of Sadak Ali, appeared, whom the petitioner claims to be her father.

(vi) Exhibit- F is the translated copy of electoral roll of 2015 where the name of one Nabi Hussain, son of Sadak Ali and one Ayesha Khatun, wife of Nabi Hussain appeared, whom the petitioner claims to be her parents.

(vii) Exhibit- G is the translated copy of electoral roll of 2017 where the

name of one Nabi Hussain, son of Sadek Ali appeared, whom the petitioner claims to be her father.

(viii) Exhibit-H is a certificate from Azad Memorial High Madrassa issued in the name of the petitioner showing as daughter of Nabi Hussain, an inhabitant of Raj Bharal wherein her date of birth is shown as 23.11.1981.

6] It is submitted by the learned counsel for the petitioner that in addition to the above exhibits, the petitioner examined herself as D.W. 1, her father as D.W.2 and the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur as D.W.3 and an employee who was working on deputation at the Election Office Tezpur since 2014 as D.W.4. Her father in his deposition had clearly deposed that the petitioner was her daughter, who was born in the year 1981 in village Raj Bharal. It was urged before the Tribunal that sufficient documents were produced and as many as four witnesses were examined in support of the claim of the petitioner that she is an Indian citizen and not a foreigner who illegally entered India on or after 25.03.1971. The Tribunal did not consider the documents sufficient along with the evidence adduced by the witnesses produced on behalf of the petitioner and accordingly, rejected the claim of the petitioner answering the reference in affirmative in favour of the State.

7] Tribunal held that Exhibits- A and B, namely, voters list of 1965 and 1971 reflect Sadek Ali Munchif son of Jafar Ali as the projected grandfather of the petitioner and Sahuran Nessa as the projected grandmother of the petitioner. In the voters lists of 1989, 1993, 2010, 2015 and 2017 the name of the father of the petitioner is recorded as Nabi Hussain, son of Hajeda/Haji Sadik/Sadek Ali respectively.

8] The petitioner's case before the Tribunal is that in the voters list of 1989 the name of the grandfather of the petitioner was wrongly recorded as Hajeda against her father's name Nabi Hussain and similarly, in the voters list of 1993 also her grandfather's name was wrongly written as Haji Sadik, whereas her father name was reflected as Nabi. In support of her contentions, the petitioner had filed an affidavit in this regard exhibiting the same as Exhibit-I. The Tribunal relying on the evidence of D.W.2, namely, Nabi Hussain rejected the case of the petitioner. The Tribunal also rejected the evidence of D.W.3, who was the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur on the ground that the proceedee, namely, the petitioner did not produce any document of her projected father, namely, Nabi Hussain to prove the existence of her father in Assam in the year 1981 as the said certificate issued by the Madrassa shows the date of birth of the petitioner as 23.11.1981.

9] One of the grounds for rejection of the case projected by the petitioner is the evidence of D.W.2, namely, Nabi Hussain, the projected father of the petitioner. In his cross examination before the Tribunal, there is a categorical statement that his grandfather's name is Jafar Munchif. He deposed that he is not the son of Hajeda or Haji Sadik. His father's name is Sadek Ali and in some documents it is recorded as Sadek Ali Munchif. The Tribunal after perusal of the records carefully and in view of the deposition of the father of the proceedee, namely, Nabi Hussein as D.W. 2, rejected the case of the petitioner.

10] Learned Counsel for the State appearing for the respondents strongly objected to the submissions made by the learned counsel for the petitioner. Referring to the Exhibits – E, F & G, the learned Standing Counsel, Foreigner Tribunal submits that the evidence of D.W.2, who claims to be the projected father of the petitioner, cannot be accepted as he has not been able to link himself to his father by way of the documents produced, namely, Exhibits- E, F & G. In these exhibits the name of the father of DW2 i.e. the grandfather of the petitioner is shown as Hajeda and Haji Sadik. Accordingly, it is submitted that these documents in themselves do not establish the link between the projected father and grandfather of the petitioner. That apart, the father of the petitioner in his deposition categorically deposed that Hajeda or Haji Sadik are not his father.

11] In that view of the matter, it is submitted by the learned State Counsel that Nabi Hussain whose name appears as son of Hajida in the electoral roll of 1989 and Nabi whose name appears as son of Haji Sadik in the electoral roll of 1993 and Nabi Hussain, son of Sadek Ali in the electoral roll of 2010 and Nabi Hussain, son of Sadek Ali Munchif, cannot be considered to be one and the same person notwithstanding the evidence of the petitioner as well as the additional affidavit filed by the petitioner. No materials are placed to suggest that Nabi Hussain, son of Hajida and Nabi, son of Haji Sadik and Nabi Hussain son of Sadek Ali are one and the same person. In the absence thereof, the link sought to be established by the petitioner through her projected father and grandfather cannot be accepted.

12] Pursuant to the orders passed by the Court, the Tribunal records have been called for before this Court. Along with the pleadings available on record the same has been carefully examined. Examination of the record reveals that an additional Written Statement was filed, wherein the petitioner stated that the name of the petitioner's grandfather had been wrongly mentioned as Hajeda and Haji Sadik instead of Sadek Ali Munchif and the name of the father of the petitioner was recorded as Nabi Hussain and sometimes as Nabi. Examination of the records reveals that the witnesses were not cross examined by the Tribunal. Consequently, the evidence adduced by the petitioner as D.W.1 along with other

witnesses, namely, her projected father, namely, Nabi Hussain as D.W.2 and the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur as D.W.3 had to be accepted as proved in support of their individual claims. That apart, although a reference is made to the evidence of the D.W.3 i.e. the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur, however, the said deposition of the DW3 is not seen from the Tribunal records. From the Tribunal records only the evidence in affidavit of D.W.1 and evidence in affidavit of D.W.2 are available at page- 53 and page-59 of the Tribunal records respectively.

13] In the absence of the evidence of D.W.3, namely, the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur being available in the Tribunal records, this Court is unable to ascertain the evidence of the said D.W.3 and its manner of appreciation by the Tribunal. Each and every place of evidence as adduced before the Tribunal must be considered and discussed. Even if the evidence is found to be irrelevant, there must be a proper discussion on the said evidence. The Tribunal must carefully evaluate the evidence adduced before it and thereafter arrive at the conclusion. Non evaluation of any evidence adduced by a proceedee before the Tribunal without proper discussion on the said, the proceedee is bound to be prejudiced as it is not possible to appreciate as to how the Tribunal arrived at its conclusion,

answering the reference in affirmative of the State and against the procedee/petitioner and as to why the evidence adduced before the Tribunal was not considered by the Tribunal in support of the claims made by the proceedee.

14] Citizenship is a valuable right of all citizens of a country. No Tribunal or Court can be permitted to tinker with it unless permitted by due process of law. In the facts of the present case, the evidence adduced by the D.W.3 as the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur is a relevant evidence which is required to be considered and properly discussed showing as to how the evidence is not relevant in support of the claim of the petitioner.

15] In view of the above discussion, this Court is of the considered opinion that the impugned opinion dated 22.10.2019 passed by the learned Member, Foreigners' Tribunal Tezpur (1st), Sonitpur, Assam in F.T. Case No.83/2017 is required to be interfered with and the matter be remanded back to the tribunal for a fresh evaluation by examining all the evidences and records.

16] This order is passed in view of the fact that the Tribunal proceeded to reject the evidence of D.W.3 but the evidence of the said D.W.3 is not found in the records of the Tribunal which are before us. The Tribunal has referred to the evidence of Khireswar Das, the Superintendent of Azad Memorial High

Madrassa, Bhojkhowa, Tezpur as D.W. 2 as also the evidence of Nabi Hussain the father as D.W.2. This again is not supported by the Tribunal records. In the Tribunal records the evidence adduced by Nabi Hussain, projected father of the petitioner, is shown as D.W.2 but the records do not contain any evidence which may have been adduced before the Tribunal by Khireswar Das, the Superintendent of Azad Memorial High Madrassa, Bhojkhowa, Tezpur as D.W.3.

17] In that view of the matter, the writ petition is disposed of setting aside the impugned opinion dated 22.10.2019 passed by the learned Member, Foreigners' Tribunal Tezpur (1st), Sonitpur, Assam in F.T. Case No.83/2017 and the matter is remanded back to the said Tribunal for a fresh decision after proper evaluation of all evidences adduced before the Tribunal.

18] Since the petitioner has already been granted bail by this Court on 18.03.2020, she would continue to remain on bail on similar terms and conditions till the culmination of the proceeding in F.T. Case No.83/2017. Since the matter is remanded back to the F.T. for a fresh decision, the petitioner will appear before the Foreigners' Tribunal, Tezpur (1st), Sonitpur by 10th of January, 2025.

19] The writ petition stands disposed of in terms of the above. The Tribunal records are remanded back.

20] Copy of this order be furnished to the Superintendent of Police (Border), Sonitpur for doing the needful.

JUDGE

JUDGE

Comparing Assistant