

GAHC010015162019



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

Case No. : WP(C)/519/2019

ALESWARI DAS @ ALESWARI BALA DAS
D/O- LT KINURAM DAS, W/O- SRI SUDHIN CHANDRA DAS, R/O- VILL-
BHARATIPARA PART-II, P.S. MERERCHAR, PIN- 781321, DIST-
BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH THE MINISTRY OF HOME AFFAIRS, GRIHA MANTRALAYA,
NEW DELHI

2:THE STATE OF ASSAM
THROUGH THE SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN ASOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GHY

5:THE DY. COMMISSIONER
BONGAIGAON
P.O. BONGAIGAON
DIST- BONGAIGAON

ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
P.O. BONGAIGAON
DIST- BONGAIGAON
ASSA

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

Advocates for the respondents : Ms. B. Sarma, CGC
For respondent No. 1

Mr. G. Sharma, S.C. Home Dept.,
For respondent Nos. 2 & 6

Mr. A. I. Ali, S.C. ECI
For respondent No. 3

Mr. R. Talukdar, G.A., Assam
For respondent No. 5

:::BEFORE:::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : **18.01.2024**

Date of Judgment & Order : **07.03.2024**

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned CGC for respondent No. 1; Mr. G. Sharma, learned Standing Counsel, Home Department Assam for respondent Nos. 2 & 6; Mr. A. I. Ali, learned Standing Counsel, Election Commission of India for respondent No. 3; and Mr. R. Talukdar, learned Government Advocate, Assam for respondent No. 5.

2. This writ petition, under Article 226 of the Constitution of India, is directed against the impugned order dated 28.05.2018, passed by the learned Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri in BNGN/FT/Case No. 1731/07, whereby the petitioner was declared to be a foreigner/illegal migrant of post 25.03.1971 stream.

3. The brief facts of the case is that in pursuant to a reference made by the Superintendent of Police (Border), Bongaigaon, vide REF:BNGN IMDT Case No. 1953/04, the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri registered a case, being BNGN/FT/Case No. 1731/07. Thereafter, notice was issued to the petitioner/proceedee for appearance. Accordingly, the petitioner appeared before the learned Tribunal and contested the case by filing Written Statement and also adduced her evidence as DW-1 and evidence of another witness, namely, Jogesh Chandar Das (elder brother), as DW-2. In support of her Indian nationality, the petitioner also produced and exhibited several documents and

she was duly cross-examined by the State.

4. It is the contention of the petitioner that she is an Indian citizen by birth and a permanent resident of Village Bharalipara Part-II, District Bongaigaon, Assam. The name of her father Late Kinu Ram Das was enlisted in the NRC of 1951 as well as in the Voters List of 1970 of the same under Abhayapuri (SC) LAC. She was married to one Sudhir Chandra Das, son of Late Puwa Uram Das, of her same village. Thereafter, her name appeared in the Voters List of 1985 and in the subsequent Voters Lists under Abhayapuri (SC) LAC. She accordingly exhibited the following documents in support of her case:

- (i) Copy of NRC 1951 (Exhibit-1)
- (ii) Voter List of 1970 (Exhibit-2)
- (iii) Voter List of 1985 (Exhibit-3)
- (iv) Voter List of 1989 (Exhibit-4)
- (v) Voter List of 1997 (Exhibit-5)
- (vi) Voter List of 2005 (Exhibit-6)
- (vii) Voter List of 2011 (Exhibit-7)
- (viii) Voter List of 2016 (Exhibit-8)
- (ix) Voter Photo Identity Card (Exhibit-9)
- (x) Gaon Panchayat Certificate (Exhibit-10)

(xi) Affidavit by OP for discrepancy in name (Exhibit-11)

5. Accordingly, it is the case of the petitioner that her name appeared in the Voters Lists of 1985, 1989, 1997, 2005, 2011 & 2016 under Abhayapuri (SC) LAC. Moreover, the petitioner also exhibited a certificate (Exhibit-10), dated 22.06.2015, issued by the Nasatra Baghekhaiti Gaon Panchayat and also exhibited her Voter Identity Card as Exhibit-9. However, the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri, without considering the materials on record, vide its impugned order dated 28.05.2018, declared her as foreigner under the Foreigners' Act, 1946 who had illegally entered into the territory of India from Bangladesh after 25.03.1971. Hence, being aggrieved and dissatisfied with the said impugned order, the present petition has been filed by the petitioner.

6. Mr. S. C. Biswas, learned counsel for the petitioner, has submitted that the present petitioner/proceedee is an Indian citizen by birth and she furnished sufficient relevant documents including the NRC of 1951, wherein the name of her projected father is shown, and her parent also cast their votes in the year 1970. He further submitted that the brother of the petitioner/proceedee also adduced his evidence as DW-2, who has already been declared as an Indian citizen. More so, the petitioner also cast her vote regularly after her name entered along with her husband. But the learned Tribunal below did not consider all these facts and the relevant documents which were exhibited by the petitioner and passed the order arbitrarily declaring the present petitioner/proceedee as foreigner of post 1971 stream.

7. In this context, Mr. G. Sharma, learned Standing Counsel for the Home Department representing respondent Nos. 2 & 6, has submitted that the petitioner failed to produce any link document with her projected father. The only link document which is exhibited by the proceedee as Exhibit-10 is the Gaon Panchayat Certificate, but the petitioner/proceedee failed to examine the Secretary or the persons from the authority concerned to prove the contents of the same. Apart from the said Gaon Panchayat Certificate, there is no other link document to prove that the petitioner/proceede is the daughter of Late Kinu Ram Das. He further raised

the point that the name of the father of the petitioner/proceedee was first entered in the Voters List of 1970, but the question arises that if a person was 45 years in 1951 when the NRC was prepared, then what prevented him to cast vote in the year 1966. It is further submitted by Mr. Sharma that the petitioner adduced the evidence of one DW-2 claiming him to be her own brother, but failed to produce any link document with DW-2, her said projected brother, who claimed to be an Indian citizen. There is no Voter List or any other document wherein the name of the present petitioner is shown along with the DW-2, who is stated to be the brother of the proceedee. More so, he submitted that the Voter List of the year 1970 is also not the certified copy as required under Section 76 of the Indian Evidence Act.

8. Mr. Sharma further relied on a decision of the co-ordinate Bench of this Court, passed in *WP(C) No. 3807/2016 (Romila Khatun Vs. The Union of India & 3 Ors.)*, disposed of on 08.06.2018, wherein, it has been held that the proof of a document is one thing and proof of contents is another. The documents cannot be proved by only exhibiting the same but the contents are also to be proved. He, accordingly, gave emphasis on paragraph No. 19 of the said judgment, wherein it has been held as under:

"19. It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. In so far Ext-F document vis-a-vis the petitioner is concerned, Nimai Miah was a resident of Kukarpar village. Petitioner after her marriage with Saijuddin had left the said village and started residing at village Hirajani under Hajo Police Station. When the petitioner got married and since when she had been residing at village – Hirajani has not come on evidence. When the petitioner was not a resident of village – Kukarpar on the date when the Gaonburah had issued the certificate, Gaonburah could have issued the certificate only on the basis of the record maintained in his office. We also do not know what happened to Nimai Miah after his name appeared in one of the documents i.e., voters list of 1965 (ExtC). Nimai Miah was 30 years of age in 1965 and in the ordinary course, he would have been around much beyond 25.03.1971. From the voters list of 1997 (Ext-A), we find that Ramila Bibi was 20 years of age. This is the first time the age of the petitioner has come on record. If Ramila Bibi was

20 years of age in 1997, she would have born in the year 1977, which means that her father ought to have been alive atleast till 1976. Therefore, on the basis of the testimony of Md. Ramesh Ali, as discussed above, it cannot be said that Ext-F was proved. Besides, there is unauthorised use of the State Emblem of India by the Gaoburah which has rendered Ext-F inadmissible in evidence. Under the State Emblem of India (Regulation of Use) Rules, 2007, Gaon Burah is not authorized to use the State Emblem of India in any manner. If Ext-F is excluded from consideration, there is nothing on record to establish that Ramila Bibi or Ramila Khatun was the daughter of Nimai Miah of Ext-C (1965)."

9. Accordingly, it is submitted by Mr. Sharma, learned Standing Counsel for the Home Department, that the present petitioner/proceedee failed to establish any linkage with her projected father and also could not produce any document to establish herself to be an Indian citizen and thus, failed to discharge her burden under Section 9 of the Foreigners' Act, 1946.

10. We have perused the case record as well as the exhibited documents submitted by the petitioner and also heard the submissions made by the learned counsels for both sides.

11. It is the case of the petitioner that she is the daughter of Late Kinu Ram Das, who was enlisted in the NRC of 1951 and his name was also entered in the Voter List of 1970 from Village Bharalipara Part-II, under Abhayapuri (SC) LAC. Though the name of the petitioner did not reflect in any Voter List along with her parents, but after her marriage, her name regularly appeared in the Voter List along with her spouse. In support of her contention, she also exhibited several Voter Lists showing her name along with her spouse. To prove her linkage with her projected father, Late Kinu Ram Das, she exhibited one Gaon Panchayat Certificate, but it is seen that she did not examine its issuing authority and thus, she failed to prove the contents of the said certificate. More so, there are no other supporting documents to prove that the said Gaon Panchayat Secretary had any personal knowledge about the present petitioner/proceedee. Thus, apart from the said Certificate of Gaon Panchayat, there is no other link document to prove herself to be the daughter of Late Kinu Ram Das, whose name appeared in the Voter List of 1970.

12. The Hon'ble Supreme Court in the case of **Rupajan Begum vs. Union of**

India & Ors., reported in (2018) 1 SCC 578, in paragraph Nos. 16 & 18 thereof, has held as under:

"16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.

18. For all the aforesaid reasons we set aside the order of the High Court insofar as the invalidity of the certificate issued by the G.P. Secretary is concerned and allow the present appeals to the above limited extent. We make it clear that the certificates issued by the G.P. Secretary/Executive Magistrate will however be acted upon only to establish a linkage between the holder of such certificate and the person(s) from whom legacy is being claimed. The certificate will be put to such limited use only if the contents of the certificate are found to be established on due and proper enquiry and verification."

13. Coming to the evidence of DW-2, it is seen that he claimed himself to be the brother of the petitioner/proceedee and also claimed himself to be an Indian citizen. But, there is no link document to prove that the DW-2, who adduced his evidence in favour of the petitioner/proceedee, is her brother. The DW-2 may be a genuine citizen of India, but there is no link document to prove that he is the brother of the present petitioner/ proceedee. More so, it is seen that the petitioner did not mention about the DW-2 as her brother neither in her Written Statement nor in her evidence-in-chief. She also did not mention about the name of her mother or any other siblings. Apart from that, she did not mention her date of birth, place of birth and the name of her parents or siblings, referred above, in her Written Statement as well as in her evidence-in-chief.

14. In this context, a decision of the Hon'ble Supreme Court passed in the case of **Sarbananda Sonowal vs. Union of India & Anr.**, reported in **(2005) 5 SCC 665**, can be relied on, wherein in paragraph No. 26 of the said judgment, it has been held as under:

"26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grand parents may also be relevant like under Section 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

15. Thus, it is seen that the petitioner/proceedee could not produce any document to prove her link with her projected father or with her projected brother (DW-2) nor could produce any document or Voter List showing her name along with her projected father or with DW-2, who is stated to be her own brother. We find that there is no other document to establish herself to be the Indian citizen and accordingly she failed to discharge her burden under Section 9 of the Foreigners Act, 1946 to prove herself to be an Indian citizen.

16. In view of above, we find that the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri, has correctly appreciated the entire facts and evidence of the case and arrived at a correct and just decision holding the petitioner to be a foreigner of post 1971 stream. Accordingly, we find that there is no perversity or any illegality in the impugned order dated 28.05.2018, passed by the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri in BNGN/FT/Case No. 1731/07 requiring any interference with it. Therefore, the present writ petition, being devoid of merit, stands dismissed.

17. The interim order passed earlier in this proceeding on 02.02.2022 stands vacated/hereby recalled.

18. Registry shall return the records of BNGN/FT/Case No. 1731/07 to the Member, Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri forthwith along with a copy of this order.

19. Registry shall also forward a copy of this order to the Superintendent of Police (Border), Bongaigaon forthwith for information.

20. In terms of above, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant