

GAHC010010582017



IN THE GAUHATI HIGH COURT

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

W.P(C) No.308/2017

Idorjan Bibi @ Iyedijan Bibi W/O
Meher Ali, D/O Lt. Tomez Uddin Sk.,
Vill- Falakata Pt-I, P.O. Bagribari,
P.S. Bagribari, Dist- Kokrajhat,
BTAD, Assam, PIN 783370

.....Petitioner

-Versus-

- 1.** The Union of India, represented by the Ministry of Home Affairs, Govt. of India, New Delhi-110001.
- 2.** The State of Assam, represented by Chief Secretary to the Government of Assam, Dispur, Guwahati -06.
- 3.** The Commissioner and Secretary to the Govt. of Assam, Home Department, Ghy-06
- 4.** The Director General of Police, Assam, Ulubari, Guwahati-05
- 5.** The Superintendent of Police (B), Kokrajhar, BTAD, Assam, PIN-783370

6. The Superintendent of Police, (B)
Dhubri, Assam, PIN-783301

7. The Deputy Commissioner,
Kokrajhar, BTAD, Assam, PIN
783370

8. The Deputy Commissioner,
Dhubri, Assam

9. The Officer-in-Charge, Bagribari
Police Station, Dist-Kokrajhar, BTAD,
Assam

10. The Elector Registration Officer,
No. 26, Bilasipara West LAC, Dist-
Dhubri, Assam.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Petitioner : Mr. M.U. Mondal, Advocate.

For the Respondents : Ms. A. Verma, SC, FT
Mr. H.K. Hazarika, Jr. Government
Advocate, Assam
Mr. A.I. Ali, SC, ECI
Ms. B Sarma, CGC

Dates of hearing : **05.09.2024**

Date of Judgment & Order : **03.12.2024**

JUDGMENT & ORDER (CAV)

[Soumitra Saikia, J.]

This writ petition is directed against the opinion dated 07.09.2016 passed by the Member, Foreigners' Tribunal, 6th Dhubri at Bilasipara, district Dhubri. By the impugned opinion, the Foreigners' Tribunal, 6th Dhubri answered the reference made before it in affirmative against the petitioner holding that the petitioner/proceedee is a foreigner who came to Assam on or after 25.03.1971. In respect of the petitioner's name appearing in the voters list, there was a mark "D" indicating that the petitioner could be a doubtful voter meaning thereby that there is a suspicion that the petitioner is not a genuine citizen of India.

2. The State pursuant to an enquiry made on information received that the petitioner is a suspected foreigner, made a reference before the Foreigners' Tribunal for an opinion as to whether the petitioner is or is not a foreigner under the Foreigners Act, 1946.

3. Upon receipt of notice from the Tribunal, the petitioner appeared and duly contested the matter. She filed her written statements denying the allegations made in the reference. She submitted her evidence-in-affidavit as D.W.-1. She exhibited five (5) documents before the Tribunal in support of her case projected.

4. The Tribunal upon consideration of the written statement as well as the evidence adduced rejected the contention of the petitioner and rendered the opinion impugned in the present writ petition.

5. Pursuant to the notice being issued in the present matter, the Tribunal records were called for.

6. The learned counsel for the parties have been heard. Pleadings available on record have been carefully perused. The Tribunal records placed before the Court have also been perused.

7. In the Written Statement, the petitioner projected her case that she was born and brought up in the Village-Khoraghat and thereafter got married with Mehar Ali of Khoraghat under P.S.-Bagribari, Dist- Kokrajhar. In her written Statement, it is stated that about 20 years she had shifted to village- Falakata Pt-I under Bagribari P.S., District-Kokrajhar and her name was enlisted in the voter list of 2013 and she was issued a Voter Identity Card showing her to be a voter of Village-Falakar Pt-I, Under 26 Bilasipara LAC, Dist-Dhubri. The petitioner stated in the written statement that her name was recorded in the voter list of 1985 of House No. 52 of Village Khoraghat under 26 Bilasipara West LAC and in the votes list of 1997, 2011 and 2013 at Village-Falakata Pt-I under 26 Bilasipara West LAC, District-Dhubri. The petitioner projected one Tomezuddin Sk as her father and Late Hawaii as her grandfather of Village- Khoraghat, P.S.-Bagribari. It is stated in the written statement that the petitioner's late father named was

recorded in the year 1977 at Village-Khoraghat under 26 Bilasipara LAC. The petitioner also produced a linkage certificate stated to have been issued by the Bagribari Revenue Circle Officer showing the name of the petitioner. It is further stated that the petitioner's father died prior to 1960 and thereafter she married another person and her stepfather thereafter was her caretaker and finally got her married with Meher Ali of Village Khoraghat. It is also stated that the Gaon Burah Falakata Pt-I also issued her a linkage certificate. The petitioner also presented her evidence-in-chief by way of an affidavit. In her evidence in chief, she stated that she was born and brought up at Village Khoraghat and thereafter was married to Meher Ali of Khoraghat under P.S.-Bagribari and she shifted to village Falakata Pt-I under Bagribari P.S., District-Kokrajhar about 20 years ago and her name was enlisted in the voters list of 2013. She reiterated her statements made in the affidavit and presented as many as filed five (5) documents as exhibits.

8. Ext-A is the Photocopy of the Voter ID card issued to her. Ext-B is the certified copy of the voter list of 2011 where it is stated that her name is listed as a voter at Sl. No. 381 showing her to be a resident of Village 230 Falakata Pt-I. She also exhibited voters list of 1977, 1997, 1995 and 2011 where it is stated that her name is enlisted as a voter along with others.

9. Although the petitioner had adduced evidence as D.W-I, however she was not cross-examined by the State.

In support of the linkage certificate issued by the Bagribari Revenue Circle Officer, the Lot Mondal appeared before the Tribunal and deposed that the linkage certificate was issued from the office and where the petitioner has shown as a daughter of Tamejuddin Sk. He also identified his signature and seal of the Circle Officer. However, the contents of the particulars mentioned in the certificate was not proved by relevant Registrars and Books maintained.

10. Upon perusal of the records, it is seen that in view of the NRC draft document placed before the Tribunal, a report was called for from the Superintendent of Police (Border) Dhubri in respect of the NRC Certificate presented by the petitioner. In pursuance to the notice issued by the Tribunal, the Superintendent of Police (Border), Dhubri by communication dated 29.02.2016 submitted a report that the name of the father Tamezuddin Sk son of Haowai of Village-185 Kharaghat P.S. Bilasipara is found entered in the registrar as House No. 36, Sl. No. 6 and that the same is correct. The report of the Superintendent of Police (Border) however does not come to the aid of the petitioner inasmuch as Co-ordinate Bench of this Court has held that the particulars in the draft NRC cannot be used as proof in support of the Citizenship of a person.

11. In so far as the linkage certificate produced by the petitioner is concerned, the same merely certifies that the petitioner got married on 05.01.1976 to Meher Ali and the Lot Mondal who issued the certificate came and deposed in support thereof. On perusal of the deposition of the Lot

Mondal, no material is found which can be considered to be in support of the petitioner's claim that she is a daughter of Tamezuddin Sk.

12. From the materials which are placed before the Court, it is seen that the petitioner attempt to establish linkage with her father late Tamezuddin Sk and her grandfather Late Hawai, both whom were resident of village-Khoraghat, is on the basis of the certificate issued by the Lot Mondal as well as the voters list and the NRC particulars.

13. In Ahitan Nessa Vs. Union of India [W.P.(C) No. 6443/2017], this Court has already held that NRC is not be a basis to prove the linkage between any suspected foreigner and the Indian parents. The linkage certificate issued by the Lot Mondal will only certify that she was married to Meher Ali, however, in order to establish that she is not an illegal migrant, she has to establish the linkage with her Indian parent or grandparent. No relative or sibling had appeared before the petitioner in support of her case to depose before the Tribunal.

14. Under such circumstances, if the materials are carefully examined, it is seen that only the voter list from 1977 has been relied upon to claim her linkage with her father late Tamezuddin Sk who she claims expired prior to 1960 as stated in her written statement as well as in her evidence. There is no mention as to whether the petitioner had any other siblings or any contemporary documents to suggest that she was born to her Indian parents and

thereby can claim to establish her link to her father. The fact remains that pursuant to the law laid down by the Apex Court in Sarbananda Sonowal Vs. Union of India, reported in (2005) 5 SCC 665 that it is no longer res intergra that the burden of proof to be discharged under Section 9 of the Foreigners Act, 1946 is first required to be discharged by the proceedee/petitioner before this Court. Unless the proceedee satisfactorily discharges this burden, the claim raised by the petitioner cannot be accepted.

15. In State of Assam and Others vs. Moslem Mondal and Others reported in 2013 (1) GLT 809, a Full Bench of this Court has held that under Section 9 of the Foreigner's Act, 1946, burden is on the proceedee to prove that she is not a foreigner, but a citizen of India and this burden never shifts. This burden has to be discharged by the proceedee by adducing evidence which are admissible; which must be proved; and which must have relevance to the facts in issue. By mere filing of documents without examining its admissibility and without the documents being proved or without examining its relevance, it cannot be said that the proceedee had discharged his burden, Question of rebuttal evidence by the State will arise only if the proceedee adduces evidence with are admissible, proved and which have relevance.

16. In Rupajan Begum Vs. Union of India and Ors, reported in (2018) 1 SCC 579, the Apex Court 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 are 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 not 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."*

17. In *Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das and ors*, reported in (2023) SCCOnline SC 996, wherein the Apex Court has expounded the principles on which a writ Court can exercise the writ of certiorari. The Apex Court in this Judgment after examining the precedents in this regard held that there are two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

The first cardinal principle is that when it comes to the issue of a writ of certiorari a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. It is not be issued on mere asking.

The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. The Apex Court held that so far as the errors of law are concerned, a writ of certiorari could be issued if an error of law is apparent on the face of the record. A mere error of law is not sufficient to attract the writ of certiorari. It must be one which is manifest or patent on the face of the record. Mere formal or technical errors, even of law, are not sufficient, so as to attract a writ of certiorari.

Coming to the facts on the present case, in view of the discussions above, we do not find any error of law or

lack of jurisdiction of the Tribunal while issuing the impugned order.

18. In view of all the discussions above, we do not find any merit to invoke our jurisdiction under Article 226 and interfere the impugned opinion and the same is therefore dismissed. Interim order if any stands vacated.

JUDGE

JUDGE

Comparing Assistant