

GAHC010127162018



2025:GAU-AS:1731

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

Case No. : WP(C)/3876/2018

SUMARI NESSA
W/O. MD. DILBAHAR SK, R/O. VILLAGE- NIGAM SHANTIPUR, P.S. MATIA,
DISTRICT- GOALPARA (ASSAM), PIN- 783125.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
HOME DEPARTMENT AND POLITICAL DEPTT.
DISPUR
GUWAHATI-6.

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-1.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZEN
1ST FLOOR
ACHUT PLAZA
BHANGAGARH
GUWAHATI-5.

5:THE DEPUTY COMMISSIONER
GOALPARA
P.O. AND P.S. GOALPARA

(ASSAM)
PIN

6:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
DISTRICT- GOALPARA
ASSAM
PI

Advocate for the Petitioner : MR. D SARMAH, MR. U DAS

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,MR J PAYENG,SC, NRC,MR. D BARUAH,SC, ECI,MS. A VERMA

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT (ORAL)

Date : 17-02-2025

(M. Nandi, J)

Heard Mr. U. Das, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel, FT Matters; Ms. P. Barua, learned Standing Counsel, ECI; Mr. T. Pegu, learned Standing Counsel, assisted by Mr. A.I. Ali, Standing Counsel, ECI; Mr. P. Sarmah, Addl. Sr. GA and Mr. H. Gupta, learned CGC.

2. The petitioner has preferred this writ petition under Article 226 of the Constitution of India against the opinion dated 02.04.2018, passed by the learned Member, Foreigners' Tribunal No.5, Goalpara, in F.T. Case No. F.T./5/343/MA/16 arising out of IM(D)T Reference Case No.423/04, whereby it was held that the proceedee/petitioner herein is a foreigner of post 1971.

3. The case of the petitioner is that her father being an eligible voter had been enlisted in the voters' list of 1966 and 1970 in no.45 Goalpara LAC of the then Goalpara district. Petitioner was born and brought up at Buduchar village under Matia Police Station in Goalpara district of Assam. She was given into marriage with one Md. Dilbahar Sheikh of Nigam Shantipur village under Matia Police Station. On attaining majority, her name has been enrolled in the voter list of 1989 along with her husband and other members of her in-laws family. Thereafter, her name was continuously being appeared in the subsequent voters' lists. However, suspecting her enrollment in the voters' list of Goalpara East LAC, petitioner has been proceeded with under the provision of Foreigners' Act, 1946.

4. On receipt of the notice, the petitioner had appeared before the concerned Tribunal and filed her written statement. Thereafter, she had adduced her evidence and her uncle Amzad Ali also adduced evidence in order to corroborate her evidence. Certain documents were also exhibited i.e. voters' list of 1966, 1970, 1989, 1997 and copy of the land documents and *gaonburah* certificates. However, the learned Foreigners' Tribunal did not rely on the documents submitted by the petitioner and opined that the petitioner is a foreigner and entered into Assam after 1971.

5. Learned counsel for the petitioner has submitted that the name of the father of the petitioner is Chandu Sk and mother is Bahatun Nessa and in support of her claim, the petitioner has produced the voters' list of 1966, 1970, 1989 and 1997 and the land documents. But as per reference, the name of the father of the petitioner has been shown as Mahammad Ali instead of Chandu Sk which has been reflected in the written statement submitted by the petitioner. As such, the observation made by the Tribunal is perverse that the petitioner has failed to prove the fact that Mahammad Ali is her father.

6. By referring the judgment of the ***State of Assam and Ors vs. Moslem Mondal and Ors*** reported in ***2013 (1) GLT 809***, the learned counsel for the petitioner has pointed out that Hon'ble Supreme Court has discussed in detail about the manner in which an investigation is to be carried out by the Investigating Officer and the referral authority before making a reference to a Tribunal for adjudication.

7. According to learned counsel for the petitioner, since there is doubt about the actual name of the father of the petitioner, therefore, the learned Tribunal before passing impugned order dated 02.04.2018, ought to have called the Investigating Officer who had conducted the alleged investigation. Since there is irregularity/doubt in this regard, so the same needs to be interfered with by this Court under the Article 226 of the Constitution of India.

8. On the other hand, Mr. G. Sarma, learned Standing Counsel, FT Matters has contended that though the petitioner stated that she is the daughter of Chandu Sk and Bahatun Nessa by relying on the voters' list of 1966, 1970 and 1979 but she has failed to prove the link with her projected parents that she is

their daughter and by producing such documents, it is not proved that she is a citizen of India by birth. Accordingly, learned Standing Counsel, FT prays for dismissal of the writ petition.

9. Having heard the learned counsel for the parties and the documents available in the record, the question to be posed in this petition is whether the opinion rendered by the Tribunal is perverse or unjustified.

10. As per the report of the Enquiry Officer, the petitioner is originally hailing from village - Tarangora, District - Mymensingh, Bangladesh and her father's name is late Mahammad Ali. Subsequently, she got married to Md. Dilbahar Sheikh of Bangladesh. In the year 1974, the petitioner along with her husband entered into India and started to reside in village - Panigram P.S – Mathabhanga, District- Cooch Behar, West Bengal. Thereafter, they were found in the village - Nigam, Shantipur, P.S - Matia, District - Goalpara, Assam.

11. In the written statement, the petitioner stated that she was born and brought up at village Sundorpur (Buduchar), P.S - Matia, District - Goalpara, Assam in the year 1967 and her parents were Chandu Sk and Bahatun Nessa and Baser Sheikh, Raijan Nessa were her grandparents. Their names were enrolled in the voters' list of 1966, 1970 and 1979 but the name of the petitioner with her husband were recorded in the voters' list of 1989, 1997 and 2005. Hence, the petitioner has failed to prove the link with her parents & grandparents by showing the aforesaid voters' lists.

12. Though the learned counsel for the petitioner has pointed out regarding wrong entry of the father's name of the petitioner in the enquiry report as late Mahammad Ali. But the petitioner did not take any initiative by filling any

application before the concerned authority for correction of her father's name in the alleged document or any subsequent documents.

13. DW-2 is one Amzad Ali, who claims to be the uncle of the present petitioner. He deposed in her evidence that the petitioner was born and brought up in village-Sundorpur (Buduchar), P.S - Matia, District - Goalpara, Assam in the year 1967 and Chandu Sk and Bahatun Nessa are the parents of the petitioner.

14. Though DW-2 has stated in his affidavit that the father of the petitioner has three children i.e. the present petitioner, Moyna Khatun and Sumed Ali. But when DW-2 was cross-examined, he replied that he did not know who is Moyna Khatun. It transpires that DW-2, who being the projected uncle of the present petitioner, has no knowledge regarding her family members. Hence, whatever stated by DW-2 cannot be taken into consideration in the matter of citizenship of the petitioner.

15. It is true that the petitioner has produced some voter list of Chandu Sk, S/o Baser Sheikh and Bahatun Nessa, W/o Chandu Sk vide voters' list of 1966, 1970 and 1979. But the petitioner has produced her voter list of 1997 as wife of Dilbahar Sheikh. It is not reflected from the record how the petitioner had any connection with Chandu Sk or Bahatun Nessa as her parents by adducing any documents.

16. Though the petitioner has stated that she was born and brought up at village-Sundorpur (Buduchar), P.S - Matia, District - Goalpara, Assam but no any document is available in the record regarding her birth at village-Sundorpur

(Buduchar). It is interesting to note that the 1989 voter list shows her age as 30 years vide **Ext.C**. As per **Ext.D** i.e. after 8 (eight) years in 1997 voter list, her age was reflected as 27 years, which is neither admissible nor acceptable in the eye of law.

17. Regarding the land documents vide **Ext.E**, which is Chitha of surveyed village of Buduchar, from which it reveals that vide order dated 03.06.2017 issued by the Circle Officer, Matia Revenue Circle, the name of the petitioner was mutated in place of her father Chandu Sk. It appears from the **Ext.E** that the Circle Officer issued order very recently in the year 2017. It is a settled position of law that the Chitha is not the document to prove the right, title and interest over the properties. Under such backdrop, **Ext.E** is also not an acceptable document.

18. Having regard to the undisputed facts as above, we find that sufficient opportunities were granted to the petitioner to establish her claim as not being a foreigner or to refute the allegation that she had illegally entered into the territory of India after 25.03.1971. In this context, we may observe that although the procedure of identification and for declaring an individual to be a foreign national cannot be relegated to a mechanical exercise and that fair and reasonable opportunity must be afforded to a proceedee to establish the claim that he/she is a citizen of India. However, such grant of fair and reasonable opportunity cannot be enlarged to an endless exercise.

19. In a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964, the primary issue of determination is whether the proceedee is a foreigner or not. The relevant fact being especially within the

knowledge of the proceedee, as such, the burden of proving citizenship absolutely rests upon the proceedee as contained in the Indian Evidence Act, 1872. This is mandated under Section 9 of the aforesaid Foreigners Act, 1946.

20. In the case of ***Sarbananda Sonowal vs. Union of India***, reported in ***2005 5 SCC 665***, the Hon'ble Apex Court has observed as follows -

"The procedure under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964 is just, fair and reasonable and does not offend any constitutional provision. There can be no manner of doubt that the State of Assam is facing external aggression and internal disturbance on account of large scale illegal migration of Bangladeshi nationals and therefore, it becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the Constitution. The influx of Bangladeshi nationals who have illegally migrated into Assam, pose a threat to the integrity and security of north eastern region and their presence has changed the demographic character of the region, reducing the local people of Assam into a status of minority in certain districts."

21. Having noticed as above, another aspect to be noted is that the scope of interference under Article 226 of the Constitution of India to a decision of the Tribunal is limited to correct errors of jurisdiction or when decision is made by the Tribunal without giving opportunity of hearing or when judgment is

rendered in violation of the principles of natural justice or where there appears to be an error apparent on the face of the record. None of the above ground exists in the present case. To reiterate, sufficient opportunities had been given to the petitioner to discharge the burden of proving that she is not a foreigner, which she utterly failed to discharge. On this ground alone, the writ court would refrain from interfering with the impugned order.

22. We find no merit in the present petition.

23. Accordingly, the writ petition is dismissed and the opinion of the Tribunal is affirmed.

24. There shall be no order as to costs.

25. Transmit the records to the Tribunal.

JUDGE

JUDGE

Comparing Assistant