

GAHC010071582019



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

Case No. : WP(C)/2345/2019

ABALA MAZUMDAR
S/O. NEPAL MAZUMDAR, VILLAGE- KAHIBARI, P.O. AND MOUZA-
SAMARIA, P.S.- BOKO, DIST.- KAMRUP(R), ASSAM. PIN-781123.

VERSUS

UNION OF INDIA AND 4 ORS.
THROUGH THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-110001.

2:THE STATE OF ASSAM
THROUGH THE SECRETARY
GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE DY. COMMISSIONER
KAMRUP(R)
P.O. AMINGAON
(ASSAM)
PIN- 781039.

4:SENIOR SUPERINTENDENT OF POLICE (B)

GUWAHATI
DIST. KAMRUP(R)
PIN- 781001.

5:OFFICER-IN-CHARGE
BOKO P.S.
DIST. KAMRUP(R)

ASSAM
PIN- 781123

Advocate for the Petitioner : MR G P BHOWMIK

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER
(ORAL)

06-01 -2023

[N. Kotiswar Singh, J]

Heard Mr. B. Chowdhury, learned counsel for the petitioner. Ms. L. Devi, learned counsel appearing on behalf of Mr. RK Dev Choudhury, learned Deputy SGI for respondent no.1; Mr. G. Sarma, learned Special Counsel, F.T. appears for respondent nos. 4 & 5; and Ms. U. Das, learned State Counsel, Assam, appears for respondent nos.2 & 3.

2 By filing this petition the petitioner has challenged the impugned opinion dated 11.07.2018 passed by the learned Foreigners Learned Tribunal 2nd, Kamrup (R) at Boko, Assam, in BFT Case No.1216/2016 (original F.T. No.1297/2007) by which the petitioner has been declared a foreigner of post 25.03.1971.

3. Learned counsel for the petitioner has challenged this opinion, on the grounds *inter alia*, that though the petitioner had produced the original Registration Certificate

of 1964 (Exhibit-A) in respect of her projected father Subal Mandal, which was issued on 14.11.1964 by the Registering Authority, Sub-Divisional Officer of Jalpaiguri Sadar showing that Subal Mandal, son of Makhan Mandal, Place of birth Village- Kamanna, P.O- Meruyaghona, P.S.-Tangail, Dist.-Mymensingha (the then East Pakistan now Bangladesh) has been residing in Village-D. Khayerbari, P.O.-Khayerbari, P.S. Dhubpuri, Dist.-Jalpaiguri (West Bengal), but the learned Tribunal did not consider the said document. Similarly, the learned Tribunal also did not accept the evidence of D.W.2, the Gaonburah, who proved the certificate issued in her name that she is the daughter of late Subal Mandal and wife of one Nepal Mazumder. In that certificate it has also been mentioned that the name of the petitioner appeared in the voters lists of 1994, 1997, 2005, 2010, 2012, 2016 and 2017.

4. In spite of those documents, the learned Tribunal held that there is no single genuine document on or before 1971 which was issued in the name of the father of the proceedee. The learned Tribunal also held that if the petitioner's father had the Registration Certificate of 1964, he should have casted his vote in the year 1966 or 1971. The learned Tribunal also held that though the D.W.2 had stated that he knew the opposite party and her father very well but he did not mention where her father was born and the D.W.2 also did not know as to whether the father of the proceedee had come from Bangladesh or not. It was observed that the D.W.2 had not seen any document in the name of the father of the proceedee and the D.W. 2 was not sure about the citizenship of the father of the petitioner. Thus, it was held by the learned

Tribunal that the petitioner had not been able to establish her linkage with her father and hence she was unable to prove the citizenship with her father. The learned Tribunal held that due to insufficient documents and non-corroboration of oral and documentary evidences, a doubt has been arisen regarding the nationality of the petitioner. Accordingly, the learned Tribunal held that the petitioner has not been able to prove her case by showing sufficient documents to prove her nationality.

5. Mr. G. Sarma, learned Special Counsel for the State has submitted that the findings of the learned Tribunal cannot be faulted with.

6. We have heard the learned counsel for the parties and perused the original records which have been requisitioned earlier.

7. We have seen the original Registration Certificate issued in the name of Subal Mondal in which it has been clearly mentioned that the petitioner's father Subal Mandal was born in Mymensingha, the then East Pakistan now Bangladesh and he was residing in Jalpaiguri after migrating from Bangladesh and staying in Khayerbari village. The certificate also bears the photograph of the father of the petitioner with his signature.

8. It is clearly evident that no question was asked at any stage of the proceeding as to the genuineness of the said certificate, and if the genuineness of the said certificate had not been questioned by the State before the Learned Tribunal, there is no reason to doubt about the genuineness of the said document by the Learned Tribunal. In fact, the said certificate would clearly show that Subal Mandal whom the

petitioner claims to be her father had indeed migrated from the East Pakistan, Bangladesh to India during 1964.

9. We have also noted the certificate issued by the Gaonburah in original which is exhibited as Exhibit-L, and it is also seen that no such question was asked to the Gaonburah when he testified before the learned Tribunal as to how and on what basis the said certificate was issued though the learned Special Counsel, F.T. submits that the certificate was issued without any referral documents.

10. We have perused the evidence of the Gaonburah who clearly stated that he knew both the petitioner and her father, though he did not know where her father was born. In our opinion, the lack of knowledge of the place of birth of the petitioner's father cannot be a ground to disbelieve the evidence of the D.W.2, who appears to be about 75 years old and no question was also asked as to on what basis the said certificate was issued. Thus, we are inclined to believe the testimony of the Gaonburah that he knew the petitioner as well as her father i.e. Subal Mandal.

11. Under such circumstances, we are of the view that the petitioner has been able to produce documents on the basis of which she can claim that she is the daughter of a person who had entered into India in the year 1964 and as such, the petitioner cannot be considered to be a foreigner.

12. For the above reasons, we allow this petition by setting aside impugned opinion dated 11.07.2018 passed by the learned Foreigners Learned Tribunal 2nd, Kamrup (R)

at Boko, Assam, in BFT Case No.1216/2016 (original F.T. No.1297/2007).

13. With the above observations, the present petition stands disposed of.

14. Let the LCR be sent back to the concerned F.T.

JUDGE

JUDGE

Comparing Assistant