

GAHC010232152017



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

Case No. : WP(C)/370/2017

RAMELA BEGUM
W/O MD. SUKUR ALI D/O AKABBOR ALI R/O VILL- PANIMAJKUCHI P.S.
GHOGRAPAR DIST. NALBARI, ASSAM.

VERSUS

UNION OF INDIA and 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF INDIA,
HOME AFFAIRS DEPARTMENT, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI -06.

3:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI -07

4:THE SUPERINTENDENT OF POLICE B

NALBARI
DIST. NALBARI
ASSAM.

5:THE DEPUTY COMMISSIONER

NALBARI
P.O. and P.S. DIST. NALBARI
ASSAM

Advocate for the Petitioner : MR.D M KHAN

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 17.07.2023
(AM Bujor Barua, J)

Heard Mr. MH Ahmed, learned counsel for the petitioner. Also heard Mr. AK Dutta, learned counsel for the respondents no. 1 being the authorities under the Union of India, Mr. G Sarma, learned counsel for the respondents no. 2 to 4 being the authorities under the Home Department of Government of Assam, Ms. U Das, learned counsel for the respondent no. 5 being the Deputy Commissioner, Nalbari.

2. The petitioner Ramela Begum had been referred to the Foreigners' Tribunal No. 4, Nalbari for rendering an opinion as to whether she is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of F.T. Case No. (GH) 582/2015. The Tribunal rendered an opinion dated 07.10.2016 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ petition instead of going into the demerits of the opinion dated 07.10.2016, we have adopted the method of granting the petitioner another

opportunity to discharge the burden under Section 9 of the Foreigners' Act, 1946 that the petitioner Ramela Begum is not a foreigner under the Foreigners Act, 1946. Under Section 9 of the Foreigners Act, 1946 the burden is on the proceedee to prove with relevant material that the person concerned is not a foreigner under the Foreigners Act, 1946. Instead of adopting the method of finding out the demerits or mistakes in the opinion rendered by the Tribunal, we deemed it appropriate that giving another opportunity to the petitioner to discharge the burden under Section 9 would be more in the interest of the writ petitioner proceedee. In the writ proceeding also the petitioner was given two opportunities to produce any further material that the petitioner may desire to rely upon to substantiate that he is not a foreigner. But inspite of such further opportunities being given no further material is produced by the petitioner.

5. In the process of discharging the burden under Section 9 of the Foreigners Act, 1946, Mr. MH Ahmed, learned counsel for the petitioner relies upon a school certificate issued by the Superintendent of MMR Rahmania Senior Madrassa, Dhanbandha which contains the information that Ramela Begum is the daughter of Akabbor Ali of village Bahmura.

6. Without requiring the petitioner to follow the procedure of law laid down in *Smt. Anima Das vs. Union of India and ors* reported in *2019 SCC OnLine Gau 3503 : (2019) 5 Gau LR 465 : AIR 2019 (NOC 308) 106* regarding the procedure to be adopted to accept a school certificate relied upon by a proceedee before the Foreigners' Tribunal, for the purpose of the present writ petition, we accept the information contained in the said school certificate relied upon by the petitioner which is marked as Exhibit 1 and is available as Annexure-1, page-18 of the writ petition. Even if we accept the information in the school certificate to be correct that Md. Akabbor Ali of village Bahmura is the father of the petitioner,

a further question would remain as to whether Akabbor Ali himself is a citizen.

7. To discharge the burden that Akabbor Ali of Bahmura as reflected in the school certificate is a citizen, reliance is placed on the voters' list of 1966 of village Kharballi PS Sarbhog Mouza Rupshi in the present Barpeta district which contains the name of Muslemuddin S/O Ismail Hussain at Sl. No. 58. It is claimed that Muslemuddin of the 1966 voters' list of village Kharballi is the grandfather of the petitioner. Further reliance is placed on the voters' list of 1966 of village Bahmura which contains the names of Ismail Mia S/O Rahim Boksa at Sl. No. 245 and that of Dudujan Nessa W/O Ismail Mia at Sl. No. 248. It is claimed that Ismail Mia is the maternal grandfather of the petitioner and Dudujan Nessa is the maternal grandmother.

8. Reliance is also placed on the voters' list of 1997 of village Bahmura which contains the names of Dudjan Nessa W/O Ismail at Sl. No. 216 and that of Asmani Begum D/O Ismail at Sl. No. 217. By referring to the voters' list of 1966 and 1997 of village Bahmura it is claimed that Asmani Begum is the mother of the petitioner and as Asmani Begum is the daughter of Dudjan Nessa and Ismail Mia of the voters' list of 1966 of village Bahmura, therefore, Asmani Begum is herself a citizen.

9. To prove that Asmani Begum of the 1997 voters' list of village Bahmura is the mother of the petitioner reliance is placed upon a ration card issued by the Dakhin Ghilajari Samabai Samiti Ltd. bearing no. DGSS/APL/5280 of house no. 73 voters' list Sl. No. 263 of village Bahmura. The family ration card contains the information that the head of the family is Akabbor Ali aged 55 years who is the son of Muslemuddin of village Bahmura. The ration card also contains the information that Asmani Begum aged 41 years is the wife of Akabbor Ali. The ration card also contains the name of Ramela Begum aged 25 years to be the

daughter of Akabbor Ali.

10. As the names of Asmani Begum and Ramela Begum appear together in the ration card it is claimed that the petitioner has discharged the burden that Asmani Begum is the mother and as Asmani Begum has been established to be a citizen, therefore, the petitioner is also a citizen. To examine the said submission, we are also required to examine as to whether Asmani Begum of the family identity card referred above and Asmani Begum daughter of Ismail of the 1997 voters' list of village Bahmura are one and the same person.

11. It is noticed that the head of the family as per the family ration card is Akabbor Ali and Asmani Begum is shown to be the wife of Akabbor Ali whereas the voters' list of 2011 of village Bahmura at Sl. No. 274 contains the information that Asmani Begum is the daughter of Ismail who is aged 39 years. If Asmani Begum is shown to be daughter of Ismail as per the voters' list of 2011, a further question would arise as to how she is also the wife of Akabbor Ali in the family ration card of the year 2015.

12. The aforesaid is sought to be explained by Mr. MH Ahmed, learned counsel for the petitioner that Akabbor Ali had died prior to the year 2011 and therefore, after his death Asmani Begum is again shown in the voters' list of 2011 by showing her to be the daughter of Ismail. The said explanation is also inconsistent inasmuch as after the death of Akabbor Ali prior to 2011 enabling Asmani Begum to be shown as the daughter of Ismail in the voters' list of 2011 the family ration card of 2015 could not have shown Akabbor Ali to be the head of the family.

13. In view of the above, we are not satisfied that the petitioner has discharged the burden that Asmani Begum of the voters' list of 1997 of village

Bahmura is the mother of the petitioner inasmuch as no document or material is produced before the Court which may show that the petitioner Ramela Begum is the daughter of Asmani Begum of the voters' list of 1997 of village Bahmura other than the family ration card of the year 2015 which again has to be rejected for the reasons already stated above. No material is also produced before the Court that Akabbor Ali himself is a citizen. Although a claim is made that Akabbor Ali is the son of Muslemuddin of the voters' list of 1966 of village Kharballi but no material is produced to show that Akabbor Ali is the son of Muslemuddin of the voters' list of 1966 of village Kharballi.

14. As the petitioner is unable to discharge the burden to show that Akabbor Ali who is claimed to be the father is himself a citizen as well as that Asmani Begum of the family ration card of 2015 and Asmani Begum of 1997 voters' list of village Bahmura are one and the same person, we are constrained to hold that the petitioner has failed to discharge the burden under Section 9 of the Foreigners Act, 1946, to show that she is a not a foreigner under the Foreigners act, 1946.

15. The petitioner also relies upon a certified copy of a jamabandi of a plot of land at village Kalgachia for the year 1958-66 in respect of patta no. 88 (new) which contains the information that the name of Akabbor Ali had been mutated in place of Muslemuddin as per the order dated 22.01.2016 of the Circle Officer. The claim of the petitioner that Akabbor Ali S/O Muslemuddin of the voters' list of 1966 of village Kharballi, which is available at page-24 Annexure-4 of the writ petition and Akabbor Ali S/O Muslemuddin whose name appears in the jamabandi in respect of a plot of land at village Kalgachia is the same person appears to be inconsistent and unacceptable as the voters' list of 1966 is of village Kharballi whereas the jamabandi is in respect of a plot of land at village

Kalgachia, which admittedly are two different villages. As the petitioner claims that he is the son of Akabbor Ali who in turn is the son of Muslemuddin of village Kalgachia as per the jamabandi, but as it cannot be concluded that Akabbor Ali S/O Muslemuddin of village Kalgachia and Akabbor Ali S/O Muslemuddin of village Kharballi of the 1966 voters' list are one and the same person, therefore, the claim of citizenship of the petitioner through Akabbor Ali S/O Muslemuddin of the 1966 voters' list of village Kharballi cannot be accepted. As Muslemuddin father of Akabbor Ali as per the jamabandi is of village Kalgachia which is a different village from that of Muslemuddin of the voters' list of 1966 of village Kharballi, we are unable to accept the contention of the petitioner that Akabbor Ali who is the acclaimed father of the petitioner is a son of Muslemuddin of the 1966 voters' list of village Kharballi.

16. In view of the above, we see no merit in this writ petition and also see no reason to interfere with the opinion of the Tribunal dated 07.10.2016 in F.T. Case No (GH) 582/2015 although for reasons different as indicated hereinabove.

17. Writ petition accordingly stands dismissed. The consequences under the law of the petitioner having failed to discharge the burden under Section 9 to be not a foreigner under the Foreigners Act, 1946 shall follow.

JUDGE

JUDGE

Comparing Assistant