

GAHC010235262017



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

Case No. : WP(C)/2438/2017

HUMARA BEGUM @ JAHANARA BEGUM
W/O- SAHAB UDDIN@ SIHAB UDDIN, D/O- MAJIR UDDIN, VILL-
GANDARVAKHANI, P.O- MULLAGANJ BAZAR, P.S- PATHERKANDI, DIST-
KARIMGANJ, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
KARIMGANJ
P.O AND DIST- KARIMGANJ
ASSAM

4:THE SUPERINTENDENT OF POLICE
KARIMGANJ
P.O and DIST- KARIMGANJ
ASSAM

5:THE OFFICER-IN-CHARGE
PATHERKANDI POLICE STATION
P.O- PATHERKANDI
DIST- KARIMGANJ
ASSA

Advocates for the petitioners : Mr. A. S. Tapader
Mr. H. I. Choudhury
Mr. A. M. Alaman

Advocates for the respondents : Mr. J. Payeng,
For respondent Nos. 2, 4 & 5
Mr. . H. K. Hazarika
For respondent No. 3

:::BEFORE:::
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : **05.12.2023**

Date of Judgment & Order : **20.12.2023**

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. A. S. Tapader, learned counsel for the petitioner as well as Mr. J. Payeng, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 4 & 5. Also heard Mr. H. K. Hazarika, learned Government Advocate for the respondent No. 3.

- 2.** None appears on behalf of the respondent No. 1, Union of India.
- 3.** The brief facts of the case is that pursuant to a reference made by the Superintendent of Police (Border), Karimganj, vide Police Enquiry No.-

D/3723/1999, the learned Member, Foreigners' Tribunal-I, Karimganj registered a case under Section 2 of the Foreigners' Act, 1946, being F.T. Case No. 367/2012 against the petitioner namely, Humara Begum. Subsequently, on transfer of the said F.T. Case No. 367/2012 from the Foreigners' Tribunal-I, Karimganj it was renumbered as F.T. Case No. 61/2016 before the learned Member, Foreigners' Tribunal-II, Karimganj, Assam, wherein, notice was initially issued to the petitioner on 04.05.2016 for her appearance in the said case. On receipt of notice of said F.T. Case No. 61/2016 the petitioner accordingly appeared before the learned Foreigners' Tribunal-II Karimganj on 02.11.2016 and contested the case by submitting her Written Statement and also adduced evidence along with the supported documents. In support of her Indian nationality, the petitioner placed and exhibited several documents and she was duly cross-examined by the State. After hearing the arguments put forwarded by the learned counsels for both the sides, the learned Member, Foreigners' Tribunal-II, Karimganj, Assam, vide its impugned final order/opinion, dated 24.03.2017 in said F.T. Case No. 61/2016, declared the petitioner as a foreigner under the Foreigners' Act, 1946, who had illegally entered into the territory of India from the specified territory of Bangladesh on or after 25.03.1971.

4. Being aggrieved and dissatisfied with the said impugned final order/opinion dated 24.03.2017 of the Foreigners' Tribunal-II, Karimganj, noted above, the petitioner has filed this writ petition.

5. It is the contention of the petitioner that she is a citizen of India by birth and was born and brought up at Village Duhalia under Patherkandi Police Station in the District of Karimganj, Assam. She contended that the name of her father and mother are Mojir Uddin and Runu Bibi, respectively, and their names appeared in the Voters Lists of 1989 and 1993 of the No. 2 Patharkandi

Assembly Constituency. She stated that she was married with one Sihab Uddin of Village Gandarvakhani, P.O. Mullaganj, and P.S. Patherkandi under South Karimganj Assembly Constituency. In support of her case, the petitioner exhibited the Voters Lists of 1966, 1970 & 1977 as Exhibits - 1, 2 & 3, wherein the name of her grandfather - Wakib Ali has been recorded. She also exhibited the Voter List of 1989 as Exhibit - 4, wherein the name of her father has been recorded and further exhibited Exhibit-5, the Voters List of 1993, wherein her name along with her father has been recorded. The petitioner also exhibited the copy of Kabin Nama (Exhibit-6) to show that she was married in the year 1993 with one Sihab Uddin. Exhibits - 7 & 8 are the Voter Lists of 1997 & 2014, respectively, wherein the name of the petitioner is recorded. Exhibit-9 is the Voter ID Card of Mojir Uddin, the projected father of the petitioner and Exhibit-10 is the certificate issued by the Gaonburha (Village Headman) showing that her projected father - Mojir Uddin is the son of one Wakib Ali.

6. Mr. A. S. Tapader learned counsel for the petitioner, accordingly submitted that the petitioner produced all the relevant documents to prove herself to be the citizen of India including the Voters Lists of 1966, 1970 & 1977, wherein the names of her grandfather is shown and also produced the Voters List of 1993, wherein her own name has been recorded along with her parents. Mr. A. S. Tapader submitted that in spite of production of all the relevant documents, the learned Member, Foreigners' Tribunal-II, Karimganj, Assam, arbitrarily and without considering the exhibited documents and the evidence on record in its true perspective, passed the impugned final order/opinion, dated 24.03.2017 in said F.T. Case No. 61/2016. He further submitted that the father of the petitioner also adduced his evidence as DW-2 stating that the petitioner/proceedee is his own daughter. Thus, the learned Member, Foreigners'

Tribunal-II, Karimganj, Assam committed illegality in passing the impugned final order/opinion dated 24.03.2017 declaring the petitioner/proceedee as a foreigner of post 1971 stream.

7. In this context, Mr. J. Payeng, learned Standing Counsel, Home Department, has submitted that no irregularity or illegality has been committed by the learned Member, Foreigners' Tribunal-II, Karimganj, Assam while passing the impugned final order/opinion dated 24.03.2017, in said F.T. Case No. 61/2016 and therefore, the interference of this Court is not at all necessary as the order has been passed after scrutinizing the documents as well as the evidence on record. Mr. Payeng further submitted that the petitioner claimed that she is the granddaughter of one Wakib Ali, S/o Arzod Ali of Village-Purbagool, whose name has been reflected in the Voters Lists of 1966, 1970 as well as in 1977. But in the Voter List of 1989, wherein the name of the petitioner along with her projected parents was recorded, the name of Village is mentioned as "Duhalia" and not "Purbagool". He also submitted that there is no evidence of shifting nor there is any mention about shifting of her projected parents from the village "Purbagool" to "Duhalia" though her projected grandfather belongs to Village Purbagool. He further submitted that in the Exhibits - 1, 2 & 3, i.e. the Voters Lists of 1966, 1970 & 1977, the name of her projected grandfather is mentioned as Wakib Ali, but in the Voters List of 1989 Exhibit-4 from Village Duhalia, the name of her grandfather is reflected as Yeakub Ali and not as Wakib Ali from a different Village, namely, Purbagool.

8. Mr. Payeng further submitted that the petitioner also could not produce any link document to show herself to be the daughter of Mojir Uddin as well as the granddaughter of one Wakib Ali, whose name was recorded in the Voters

Lists of 1966, 1970 & 1977. Thus, the proceedee/petitioner could not establish that the person Wakib Ali, whose name was recorded in the Voters Lists of 1966, 1970 & 1977, and the person Yeakub Ali, whose name is reflected as the father of one Mojir Uddin in the Voter List of 1989 (Exhibit-4), is the one and the same person. Accordingly, the petitioner/proceedee could not establish herself to be an Indian Citizen on the basis of the documents she relied on.

9. We have heard the submissions made by the learned counsels for both sides, perused the original case record of F.T. Case No. 61/2016 and the evidence recorded by the learned Member, Foreigners' Tribunal-II, Karimganj, Assam in the said F.T. Case. As stated above, it is the contention of the petitioner that she is the granddaughter of one Wakib Ali of Village Purbagool, who was an Indian citizen, whose name was recorded in the Voters Lists of 1966, 1970 & 1977. She further claimed that her name is also recorded in the Voter List of 1989 Exhibit-4 along with her parents and thereafter her name appeared in the Voters Lists of 1997 & 2014 along with her husband. But, from the Exhibits - 1, 2 & 3, it is seen that the person named Wakib Ali belonged to Village Purbagool and he casted his vote from Patherkandi Assembly Constituency. But, from the Voter List of 1989 i.e., Exhibit-4, it is seen that petitioner's projected father Mojir Uddin is shown as son of one Yeakub Ali and not Wakib Ali. Further, from the Exhibit-4, it is very surprising to note that the age of her projected father and mother are recorded as 30 years, whereas petitioner's age is recorded as 20 years, which is not at all possible, that cannot be considered as a minor discrepancy as a couple of 30 years of age cannot be the parents of a girl of 20 years of age. In the same time, it is also seen that her age is shown as 18 years in the Voter List of 1997, i.e. Exhibit-7, after her marriage. Further, from Exhibit-4, i.e. the Voter List of 1989, it is seen that the

name of the village of her projected parents is shown as Duhalia Colony (Block-4) and not as Purbagool and there is no evidence at all that the parents of the petitioner shifted from Village Purbagool to Duhalia, which she did not mention in her written statement. Thus, there is no evidence at all that the projected parents of the petitioner, whose names were reflected in the Voter List of 1989 onwards, were Indian citizen as there is no link document to prove that the person named in the Voters Lists of 1966, 1970 & 1977, namely, Wakib Ali from Village-Purbagool is the father of one Mojir Uddin, the projected father of the petitioner from Village-Duhalia Colony (Block-4).

10. The petitioner also adduced the evidence of one Mojir Uddin (DW-2) who claimed himself to be the father of the present petitioner, who in his examination-in-chief that late Wakib Ali is his father and late Arjod Ali is his grandfather and that he and his forefathers are permanent resident of Village & P.O. Duhalia of Patherkandi Police Station, District-Karimganj, Assam. Said DW-2 in his examination-in-chief also stated that the petitioner who is also known as Jahanara Begum is his first daughter out of his eight numbers of children who was born at Village & P.O. Duhalia of Patherkandi Police Station, District-Karimganj, Assam and married to Sihab Uddin, son of Moinul Hoque of Village-Gundervakhani, P.O. Mullaganjbazar, P.S. Patherkandi, District-Karimganj. In his cross evidence said DW-2 stated that the petitioner is his eldest daughter but he did not remember as to where she was born.

11. A Co-ordinate bench of this Court, in the case of Asia Khatoon Vs. Union of India and 3 Others in WP(C) No. 4020/2017, decided on 21.11.2019, wherein a projected father deposed on behalf of her daughter, i.e., the petitioner of said WP(C) No. 4020/2017, have held that the statement of said projected father

cannot be relied upon in the absence of any documents showing his relationship to the petitioner as in a proceeding under the *Foreigners Act, 1946* and the *Foreigners' (Tribunals) Order, 1964*, the evidentiary value of oral testimony without support of documentary evidence is wholly insignificant, since oral testimony alone is no proof of citizenship. Relying on the same, we found that the evidence of DW-2 the projected father of the petitioner cannot be considered to be cogent, reliable and admissible evidence for establishing the linkage between the petitioner and the said DW-2 her projected father.

12. The petitioner further adduced the evidence of one Nurul Hoque as DW-3, who stood as a witnesses in her marriage, and he deposed that he know the father of the petitioner as well as the grandfather and he stood as a witness in her marriage. But, from his cross-evidence, it is seen that he is the neighbor of the petitioner who stood as a witness when she got married with one Sihab Uddin in the year 1993. Apart from that, he has no other personal knowledge and his evidence is no way can help the petitioner that she is the granddaughter of one Wakib Ali, from Village-Purbagool who is stated to be an Indian citizen. The petitioner also could not prove her projected parents as an Indian citizen as there is no link document to establish that her projected father is the son of said Wakib Ali of Village-Purbagool.

13. Though petitioner exhibited Exhibit-6 Kabin Nama but the same is not a registered one and does not have the signature of the petitioner except the signature of her husband Sihab Uddin and some others who did not adduce evidence as witnesses. Petitioner also exhibited the Election Photo Identity Card of her projected father Mojir Uddin, son of Wakib Ali as Exhibit-9 resident of Village-Duhalia Colony (Block-4) but not the son of Wakib Ali of Village-

Purbagool as specified in Exhibits-1, 2 and 3, noted above, which does not indicate about the linkage between the petitioner and her projected father Mojir Uddin. The petitioner has also exhibited a certificate issued by the authorities of Fordikona Duhalia Gaon Panchayat certifying that her projected father Mojir Uddin, Son of Late Wakib Ali is an inhabitant of Village-Duhalia-IV as Exhibit-10, but the issuing authorities were not produced and examined by the petitioner to prove the same. Further she exhibited one certificate issued by the Secretary of Foridkona Gaon Sabha of Cachar issued in the name of Md. Wakib Ali, son of Hazi Arzad Ali of Village-Purbagool as Exhibit-12. But petitioner did not prove the said document Exhibit-12 by adducing the evidence of the issuing authority of the said exhibit. As such, the exhibits-9, 10, 11, 12 exhibited by the petitioner were not proved before the Tribunal as per the provisions of the Evidence Act, 1872 as amended. Moreover, the petitioner did not mention about those exhibits in her written statement submitted before the said Foreigners' Tribunal and those documents have nothing to prove her linkage with her projected father, Mojir Uddin as well as her projected grandfather Wakib Ali of Village-Purbagool.

14. In this context, a decision of Co-ordinate bench of this Court, passed in WP(C) No. 3807/2016, decided on 08.06.2018, can be relied on 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. Further, in paragraph No. 19 of the said judgment, 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)."

15. Further, 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."

16. So, from the entire discussions made hereinabove, we have seen that the projected grandfather of the petitioner Wakib Ali of Village-Purbagool may be an Indian citizen, but the petitioner/proceedee failed to establish herself to be the granddaughter of said Wakib Ali of Village-Purbagool. The petitioner could not prove any link document as required under the Evidence Act to prove that she is the daughter of her projected father Mojir Uddin who is the son of Wakib Ali of Village-Purbagool and thus, she failed to discharge her burden as required under Section 9 of the Foreigners' Act, 1946 so as to prove her Indian citizenship.

17. In view of above, we find that the learned Member, Foreigners' Tribunal-II, Karimganj, Assam, has rightly passed the impugned final order/opinion, dated 24.03.2017 and arrived at a just and correct decision holding the petitioner to be a foreigner under the Foreigners' Act, 1946.

18. Accordingly, we find that there is no perversity or any illegality in the impugned final order/opinion, dated 24.03.2017, passed by the learned Member, Foreigners' Tribunal-II, Karimganj, Assam, in F.T. Case No. 61/2016, requiring any interference with the same. Therefore, the present writ petition, preferred by the petitioner, being devoid of merit, stands dismissed.

19. Interim order passed earlier in this proceeding on 04.05.2017 is accordingly, stands vacated/hereby recalled.

20. The Registry shall return the records of F.T. Case No. 61/2016 to the Foreigners' Tribunal-II, Karimganj, Assam forthwith along with a copy of this order.

21. Further, the Registry shall also forward a copy of this order to the Superintendent of Police (Border), Karimganj forthwith for its information.

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

JUDGE

JUDGE

Comparing Assistant