

GAHC010031102018



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

Case No. : WP(C)/952/2018

RUP BHANU
D/O- KURAN ALI, W/O- ABDUL ALI, VILL- MAHIMARI, P.S. CHHAYGAON,
DIST- KAMRUP(R), ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-1

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

4:THE STATE COORDINATOR OF NRC
ASSAM
DISPUR
GHY-6

5:THE DEPUTY COMMISSIONER
KAMRUP (R)
DIST- KAMRUP (R)
ASSAM

6:THE SUPERINTENDENT OF POLICE KAMRUP (R) (BORDER)
DIST- KAMRUP(R)
ASSAM

7:THE OFFICER-IN-CHARGE
OF CHHAYGAON POLICE STATION
DIST- KAMRUP (R)
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. M I HUSSAIN,MS. P AHMED,MR.
A MOTIN,MR. E HUSSAIN

Advocate for the Respondent : ASSTT.S.G.I., GA, ASSAM,SC, NRC,SC, ELECTION
COMMISSION.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 24.10.2024
(K.R. Surana, J)

Heard Mr. M.I. Hussain, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned CGC for respondent no.1; Mr. A.I. Ali, learned standing counsel for the ECI, respondent no.2; Mr. G. Sarma, learned standing counsel for the Home Department, respondent nos.3 and 6; and Mr. H.K. Hazarika, learned Govt. Advocate for respondent nos.5 and 7.

2. Although the State Coordinator, NRC, Assam is under the administrative control of the Home Department, but there is no representation for the said respondent no.4.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the opinion dated 19.01.2018, passed by the learned Member, Foreigners Tribunal No.2, Kamrup (Rural) at Boko in B.F.T. Case No. 3555/2016.

4. By the said opinion dated 19.01.2018, the learned Tribunal, after

discussing the evidences and materials on record, came to the conclusion that the petitioner Rup Bhanu @ Rup Bhanu Nessa is a foreigner who does not belong to Indian National.

5. Having heard the learned counsel for both sides and upon perusal of the records, which were requisitioned from the learned Tribunal, we take note of the fact that the learned Tribunal had discussed the evidence of *Gaonbura* and the discussion on the evidence of DW-1, 2 and 3 are reproduced as below:

“D.W., the Gaonburah has submitted his affidavit evidence in support of case of D.W.1. D.W.2 further stated that after verifying all the documents of the Proceedee, he has issued the certificate in favour of D.W.1.

D.W.3 the father of D.W.1 has submitted his affidavit evidence in support of case of D.W.1. In his cross examination, D.W.3 has stated that D.W.1 is his own daughter and was born at village Tukrapara under Chhaygaon P.S. That D.W.1 became a doubtful voter since 1997. The name of D.W.3 has been recorded in the voter list of 1961 to till date. D.W.2 and D.W.3 further reveals the identity, background and permanent residence of the opposite party. After hearing both sides, the evidence is closed. Heard argument advanced by Learned Counsels appearing for both sides.”

6. However, on perusal of the records, it is noticed that the petitioner had adduced evidence of herself as DW-1 and her father, namely, Kuran Ali has adduced evidence as DW-2. The *Gaonbura* was never called for as a witness and the evidence of the said *Gaonbura* is also not on record.

7. We also take note of the fact that in Annexure-19 to the writ petition, document which is annexed is the deposition of witness DW-3. However, it appears that reference to DW-3 is a typing error as the name of the said DW-3 is recorded as Kuran Ali, who had filed the evidence-on-affidavit as DW-2. However, in the records of the Tribunal, after issuance of the certified copy (Annexure-19), the DW-3 is overwritten as DW-2. From the forwarding index, it is also noted that the learned Tribunal, while forwarding the records has

mentioned in the index only about DW-1 and DW-2.

8. The learned standing counsel for the Home Department has supported the impugned opinion insofar as it relates to the discussion on the evidence of the *Gaonbura* by submitting that such observation and discussion on evidence of the *Gaonbura* would not prejudice the petitioner as the petitioner otherwise failed to produce any documents to connect her with her projected father.

9. Upon considering the submissions made at the Bar, the Court is of the opinion that the discussion of the evidence of the *Gaonbura*, which was never adduced, has vitiated the opinion as we are of the considered opinion that discussion of the evidences on record must be based on the materials available on record and not on extraneous materials, which are not a part of record. The discussion on the evidence of *Gaonbura*, which is not there on record, is not sustainable and therefore, the Court is unable to accept that the discussion on the evidence of the Tribunal is bad, but the opinion rendered on such discussion is correct.

10. Therefore, the Court is of the unhesitant view that in light of the discussion on the *Gaonbura*, which does not exist in the record, the impugned opinion dated 19.01.2018, passed by the learned Member, Foreigners Tribunal No.2, Kamrup (Rural) at Boko in B.F.T. Case No. 3555/2016 stands vitiated and therefore, the same is set aside.

11. Accordingly, the matter is remanded back to the said Tribunal for a fresh decision.

12. The parties are at liberty to take such steps before the learned Tribunal as they may be so advised.

13. The petitioner shall, without fail, appear before the learned Tribunal on

14.11.2024 and by producing a certified copy of this order, await further instruction from the said learned Tribunal.

14. Issuance of fresh notice to the petitioner by the learned Tribunal is not required in view of the aforesaid direction.

15. In the event the petitioner fails to appear before the said learned Tribunal or cooperate with the proceedings, it would be open to the said learned Tribunal to pass such orders as it may deem fit and proper.

16. The order of bail as granted on 21.02.2018 to the petitioner would stand lapse on 14.11.2024.

17. Let the records of the learned Tribunal be returned back.

JUDGE

JUDGE

Comparing Assistant