

GAHC010127312017



AS:12814-DB

2024:GAU-

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

Case No. : WP(C)/2358/2017

AROTI SHILL @ AROTI SHIL @ ARATI SHIL
W/O. SRI NEPAL CHANDRA SHILL, R/O. WARD NO. 7, LANKA TOWN, P.S.
LANKA, DIST. HOJAI, ASSAM.

VERSUS

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

2:STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER and SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-6.

4:THE DEPUTY COMMISSIONER
HOJAI

P.O. SANKARDEVNAGAR

DIST. HOJAI
ASSAM
PIN-782442.

5:THE SUPERINTENDENT OF POLICE BORDER
HOJAI
P.O. SANKARDEVNAGAR
DIST. HOJAI
ASSAM
PIN-782442

Advocate for the Petitioner : MR.D P BORAH, MS.S BORO,MR.B PAUL

Advocate for the Respondent : GA, ASSAM, ADDL. AG, ASSAM,ASSTT.S.G.I.,MR.D K SAIKIA

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

16.12.2024

(K.R. Surana, J)

Heard Mr. D. P. Borah, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel for the FT matters representing respondent Nos. 2, 3 and 5 and Mr. P. Sarmah, learned Additional Senior Government advocate for the respondent No.4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned judgment and order dated 30.03.2017, passed by the learned Member, Foreigners' Tribunal, Nagaon No. 7th at Lanka, in

F.T./L/Case No. 900/2016, arising out of SP's Case No.373/2014, declaring the petitioner as a foreigner who has entered India illegally after 25.03.1971.

3. On receipt of notice of the proceedings, the petitioner appeared before the learned Tribunal and had filed a written statement on the first date of appearance i.e., 25.11.2016, and on the next date of the proceedings, which was fixed on 22.12.2016, she has filed her evidence on affidavit and she has exhibited 8 (eight) documents, viz; (a) certified copy of voters list of 1965 (Ext.1), (b) certified copy of the voters list of 1971 (Ext.2), (c) certified copy of the voters list of 1979(Ext.3), (d) copy of NRC of 1965 (Ext.4), (e) certificate dated 22.06.2015 issued by the President Secretary of Jaluguti Gaon Panchayat containing counter signature of Circle Officer (Ext.5); (f) certificate dated 28.11.2016, issued by the Ward Commissioner, Lanka Municipal Board, Ward No. 7 (Ext.6); (g) certified copy of the voters list of 1989 (Ext.7) and (h) the affidavit of the petitioner to explain the discrepancy of the name of her father sworn on (22.12.2016) (Ext. 8).

4. It may be mentioned that, as per the record, the learned Member, Foreigners Tribunal, Lanka had asked questions to the petitioner which is recorded on 06.01.2017, purportedly as the Government pleader was absent.

5. The learned Tribunal on discussing the evidence on record discarded Exhibit nos. 1, 2 and 3 and being the certified copies of the voter list of 1965, 1971 and 1979 on the ground that the house number and the block numbers were not matching and the learned Tribunal took note of the fact that during the period from 1965 to 1971 no door to door enumeration was carried out. Moreover, the learned Tribunal also found discrepancy in the age of the father on comparison of the age reflected in Exhibit-1 and Exhibit-2. The voter list of

1971 (Ext.3) was discarded on the ground that the name of petitioners grandfather was recorded as Mahima whereas during the examination by the learned Tribunal she had stated the name of the grandfather as Mohim Mazumdar. The NRC of 1965 (Ext.4) was discarded as it was a downloaded copy and had no evidential value either as primary or secondary evidence. Exhibit- 5 and 6 were discarded as the said 2(two) certificates were not proved in accordance with the law laid down in the case of *Life Insurance Corporation of India vs Ram Pal Singh Bisen, (2010) 4 SCC 491*. Accordingly, it was held that the said documents were of no help in supporting the linkage of the petitioner with Indian Citizenship status. Exhibit-7 which is the voters list of 1989 was discarded in light of discussion of Exhibit Nos. 1, 2 and 3. The affidavit (Ext.8) was also discarded that it was a said supporting affidavit. Accordingly, the petitioner was declared to be a foreigner.

6. The learned counsel for the petitioner has made a submissions that prior to the effect that the minor discrepancies in reference to the block numbers as the ground for discarding Exhibit nos. 1 and 2 as well as with regard to the discrepancy in the age of petitioners father that Exhibit-3 was discarded on the discrepancy in the name of the grandfather of the petitioner, this court could not have been a ground for discarding the said exhibits and to declared the petitioner to be a foreigner. It is also submitted that the petitioner had produced Exhibit nos. 5 and 6 which was not proved in accordance with law therefore, an opportunity should be granted to the petitioner to prove her linkage of elsewhere projected parents who are claimed to be citizens of India.

7. Per contra, the learned Standing counsel for the FT matters has made a submission in support of the impugned opinion as it is submitted that as the documents exhibited by the petitioner it was not established her linkage to her

projected parents and grandparents, the opinion impugned in this writ petition warrants no interference.

8. Considering the submissions and also examined the records received from the learned Tribunal, it is observed that on 06.01.2017, in the absence of the Government Pleader, the learned Tribunal asked questions to the petitioner, which is recorded on the back page of page-1 of the evidence on affidavit. Having read the examinations by the learned Tribunal, the records were handed over to the learned Standing Counsel for the FT matters to examine if the petitioner was confronted or questioned on any of the grounds on which the documentary evidence of the petitioner was discarded. However, upon perusal of the said examination, done by the learned Tribunal, neither this Court nor the learned Standing Counsel for FT matters could find any circumstances relating to exhibit nos. 1 to 8 that were asked to the petitioner.

9. The learned Tribunal has recorded that during the period from 1965 to 1971 no door to door enumeration was carried out. To support the said finding, no one from the concerned authorities was examined by the learned Tribunal. The petitioner was not asked any question to explain why there was any change in the block numbers in respect of the voter list of 1965, 1971. As per paragraph-6 of the opinion, Exhibit-4 is stated to be the downloaded copy of voters list of 1965 where as per the record of the learned Tribunal, the document marked as the Exhibit-4 is the copy of NRC of 1965. Therefore, the Court is of the considered opinion that as the learned Member, Foreigners' Tribunal, Nagaon, 7th at Lanka had examined the petitioner instead of being cross examined by the government pleader and in the order sheet of 06.01.2017, the learned Tribunal has recorded that it had examined the petitioner due to the absence of and in the order sheet of 06.01.2017, the

learned Tribunal has posed questions to the petitioner which he answered on oath in the absence of the Government Pleader, it *prima facie* appears that the learned Tribunal had substituted itself to ask questions in view of the Government pleader. Now, the questions asked are clarificatory in nature. Moreover, in view of incorrect appreciation of Exhibit-4, which as per paragraph-6 of the evidence on affidavit is the copy of NRC, and the document marked as Exhibit-4 corresponds to the NRC of 1965, which was appreciated as the Voters list of 1965. This Court is of the considered opinion that the impugned opinion is not sustainable on facts and in law.

10. As admitted, the Court has no hesitation to set aside the impugned opinion dated opinion dated 30.03.2017, passed by the learned Member, Foreigners Tribunal, Nagaon No. 7th in F.T./L/Case No. 900/2016 arising out of SP's Case No.373/2014, and consequently, the matter is remanded back to the learned Tribunal for fresh adjudication in accordance with the law.

11. The petitioner is directed to appear before the learned Member, Foreigner's Tribunal- 7th, Nagaon at Lanka, within a period of 30 days without waiting for any fresh notice from the said learned Tribunal. By producing a certified copy of this order, the petitioner shall seek further instructions from the said learned Tribunal.

12. In this, the petitioner is allowed to appear before the learned Tribunal, and she shall not be arrested or deported out of the Country.

13. However, it is provided that in the event, the petitioner does not appear before the learned Tribunal within the time allowed, it could be open to the Tribunal to pass a fresh opinion based on the materials available on record, treating the petitioner to be absent on call and it would be permissible for the

said Tribunal to pass an *ex parte* opinion.

14. The Registry shall send back the records expeditiously.

15. Application stands allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant