

GAHC010147302018



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

WP(C) No. 4489/2018

Kartik Bepari
S/O - Late Bhuvan Bepari,
Village-Mohanpur Part-II, P.S.-Jogighopa,
District- Bongaigaon, Assam

.....Petitioner

-Versus-

1. The Union of India
Represented by the Secretary to the Ministry of
Home Affairs,
Government of India, Sastri Bhawan, New Delhi.
2. The State of Assam
Represented by the Commissioner and Secretary to
the Government of Assam Department of Home
Dispur Guwahati-6.
3. The Deputy Commissioner,
Bongaigaon P.O and District-Bongaigaon
Assam
4. The Superintendent of Police (Border),
Bongaigaon P.O and District-Bongaigaon
Assam
5. The Election Commission of India
New Delhi
6. The State Coordinator, NRC Assam

.....Respondents

For Petitioner : Ms. F. N. Zaman, Advocate
For Respondent(s) : Mr. G. Sharma, SC, Home Department
Mr. H. K. Hazarika, Government Advocate
Date of Judgment : **20.09.2024**

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT

(MRIDUL KUMAR KALITA, J)

1. Heard Ms. F. N. Zaman, learned counsel for the petitioner. Also heard Mr. G. Sharma, learned Standing Counsel, Home Department, Assam, appearing for Respondent No. 2 & 4, Mr. H. K. Hazarika, learned Government Advocate, Assam for Respondent No. 3.
2. This writ petition has been filed by the petitioner namely, Kartik Bepari, impugning the order/opinion dated 07.04.2018, passed by the learned Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri in Case No. BNGN/FT-2/APR/611/2016, whereby the petitioner was declared as a foreigner, who entered into India, Assam, after 25.03.1971.
3. On perusal of the case records, it appears that initially the reference was made against the petitioner under Illegal Migrants (Determination by Tribunals) Act, 1983 [hereinafter

referred to as IM(D)T Act] by the Superintendent of Police (B) Bongaigaon to the learned Illegal Migrants Determination Tribunal, Goalpara, suspecting the petitioner to be an illegal migrant, who entered into India (Assam) after 25.03.1971.

4. Later on, after striking down of the IM(D)T Act, 1983 by the Hon'ble Supreme Court of India in the case of "**Sarbananda Sonowal Vs. Union of India & Anr**" reported in **(2005) 5 SCC 665** and as per the direction of Hon'ble Supreme Court of India passed in the said case, the aforesaid case was transferred to the learned Member, Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri for disposal.
5. On receipt of the reference, on transfer, Case No. BNGN/FT-2/APR/611/2016 was registered and notice was issued to the petitioner.
6. On receipt of the notice from the learned Tribunal, the petitioner appeared before the learned Tribunal and on 06.12.2016, he filed his written statement along with the supporting documents.
7. In his written statement the petitioner has stated that he was born on 20.11.1960 at Mohanpur Village under Jogighopa Police Station and also took his primary education at Mohanpur Primary School in the district of Bongaigaon.
8. He has also stated that the petitioner has landed property at

village Mohanpur Part-I covered by Dag No.106/176 under Patta No.84/76, in his name.

- 9.** He has also the petitioner has also stated that the name of his father is Bhuban Chandra Bepari @ Bhuban Bepari and his name was enrolled in the electoral roll of the year 1966 of Village Kabaitari Part-I under No. 43 Bongaigaon Legislative Assembly Constituency.
- 10.** He has also stated that the names of the petitioner's brother and his mother, namely Siddheshwar Bepari and Nagari Bala Bepari respectively were also enrolled in the electoral roll of 1966. Petitioner has also stated that name of his father has also been reflected in the electoral roll of 1970 in Village Kabaitari Part-3 under a Abhayapuri Police Station in the then Goalpara district (Now Bongaigaon District).
- 11.** It is also stated by the petitioner that his name has also been enrolled in the voter list of 1985 at Serial No. 357 against house No. 81 of Village Kabaitari Part-3 under Abhayapuri South (SC) Legislative Assembly Constituency along with his other family members.
- 12.** The Petitioner has also stated that, in the year 1986 he shifted his residence to revenue Village Mohanpur Part-2 and his name was enrolled in the voter list of 1997 of Village-Mohanpur Part-2 under No. 35 of Abhayapuri (SC) Legislative Assembly

constituency at Serial No. 464 House No. 60. He has also stated that his name has also been included in the voter list of 2008. He further states that he is a bona fide citizen of India by birth.

- 13.** In support of the contentions made by the petitioner in the written statement, he examined himself as DW-1 and filed his evidence on affidavit on 27.01.2017.
- 14.** In his evidence on affidavit, the petitioner, as DW-1, had reiterated the facts which he has stated in his written statement.
- 15.** The petitioner has exhibited following documents while deposing as DW-1
 - A.** Exhibit 1-School Certificate,
 - B.** Exhibit 2-Landholding Certificate,
 - C.** Exhibit 2-Translated Copy of Electoral Roll of the Year 1966,
 - D.** Exhibit 4-Translated Copy of the Electoral Roll of 1970,
 - E.** Exhibit-5 Translated Copy of Electoral Roll of 1985,
 - F.** Exhibit-6 Translated Copy of Electoral Roll of 1997,
 - G.** Exhibit-7 Translated Copy of Electoral Roll of 2008,
 - H.** Exhibit-8 Translated Copy of Electoral Rolls of 2016.
- 16.** Ms. F. N. Zaman, learned counsel for the petitioner has submitted that the petitioner is a citizen of India and he was born in Mohanpur village in the district of Bongaigaon on

20.11.1960 and the name of the petitioner's father is Bhuban Ch. Bepari @ Bhuban Bepari whereas his mother's name is Nagari Bala Bepari. She has also submitted that in the voter list of 1966 and 1970 the age of the mother of the petitioner has been wrongly mentioned as 35 years and 30 years respectively and for that fault the voter list which were exhibited by the petitioner may not be discarded.

- 17.** Learned counsel for the petitioner has also submitted that the petitioner has exhibited 8 documents as Exhibit-1 to Exhibit-8, respectively. However, for the verification process which was going on in connection with the updation of NRC, on 07.12.2017, the petitioner took back the originals of all exhibited documents from the learned Tribunal.
- 18.** Learned counsel for the petitioner has also submitted that the learned Tribunal without affording an opportunity to the petitioner to deposit back the original documents gave the impugned opinion without discussing anything about the documents which were exhibited by the petitioner.
- 19.** Learned counsel for the petitioner submits that the documents exhibited by the petitioner clearly shows that the petitioner is an Indian citizen and that he is not a foreigner who had entered into India after 25.03.1971.
- 20.** Learned counsel for the petitioner has also submitted that the

learned Tribunal had failed to consider the additional document submitted by the petitioner before the learned Tribunal which is a landholding certificate wherein the name of the father of the petitioner has been shown and which may be treated as a link document to show that the petitioner is the son of Bhuban Bepari whose name appears in the voter list of 1966.

- 21.** Learned counsel for the petitioner has submitted that the learned Foreigners Tribunal by ignoring the evidentiary value of the documents exhibited by the petitioner has come to a wrong finding that the petitioner is a foreigner who had entered into Assam after 25.03.1971, hence, she submits that the impugned opinion/order passed by learned Foreigners Tribunal is bad in law and liable to be set aside and quashed.
- 22.** On the other hand, learned Standing Counsel, Home Department has submitted that the petitioner has failed to relieve his burden under Section 9 of the Foreigners Act, 1946 by adducing reliable, cogent and admissible documentary evidence to prove that he is a citizen of India.
- 23.** Learned Standing Counsel, Home Department has submitted that though, the petitioner has stated in the written statement that he was born in the year 1960, however, he has not been able to adduce any admissible documentary evidence to prove the said fact. He has submitted that the school certificate which

is exhibited as Exhibit-1 was not proved by the issuing authority of the said certificate. He submits that the learned Tribunal has rightly discarded the Exhibit-1 as same was not proved by the headmaster who had issued the said certificate hence the said certificate and the contents thereof may not be regarded as duly proved.

24. Learned Standing Counsel, Home Department, Assam has also submitted that the voter lists which have been exhibited by the petitioner as Exhibit-2 to Exhibit-8 are all translated copy of the electoral rolls and same are not certified copies of the voter lists. He submits that in a catena of judgment by this Court it has been settled that to be admissible evidence the documentary evidence pertaining to voter list shall have to be certified copy of such voter list and any uncertified copy or unauthenticated copy of the voter list would not be admissible in evidence. In support of his submission learned Standing Counsel, Home Department has cited a ruling of this Court in the case of **"Borhan Ali Vs. Union of India and Others"** reported in **2018 (4) GLT 392**.

25. Learned Standing Counsel, Home Department has also submitted that the landholding certificate, which the learned counsel for the petitioner has mentioned in her submission was never exhibited by the petitioner during the proceedings before the learned Tribunal.

- 26.** He submits that mere production of a copy of a landholding certificate is not sufficient to prove the said document or the content thereof unless a document is proved in accordance with law.
- 27.** Learned Standing Counsel, Home Department has also submitted that in the absence of any admissible, cogent and relevant documentary evidence showing the linkage of the present petitioner with his projected father, the learned Tribunal was right in observing that the petitioner has failed to show linkage with his projected father, therefore, it is submitted that the learned Tribunal was right in arriving at a finding that the petitioner is a foreigner who entered into India after 25.03.1971.
- 28.** Thus, the learned Standing Counsel, Home Department, Assam has submitted that the petitioner has miserably failed to prove that he is a citizen of India, therefore, the impugned order/opinion rendered by learned Tribunal does not warrant any interference by this Court.
- 29.** We have considered the submissions made by learned counsel for both the sides and have perused the materials available on record including the case record of Case No. BNGN/FT-2/APR/611/2016 which was requisitioned in connection with this writ petition.

30. This Court, in the case of "**Borhan Ali Vs. Union of India and Others**" (*Supra*) has observed as follows:

"Therefore, if a proceeding relies on a voter list, only a certified copy of such voter list or extract thereof would be admissible in evidence. Filing of an unsigned or unauthenticated or uncertified copy of the voter list sought to be relied upon as a proof of citizenship would not be admissible in evidence."

31. In the instant case also the voter list of various years which are exhibited by the DW-1 as Exhibit-2 to Exhibit-8 are all translated copy of the electoral rolls of different years. Mere perusal of the exhibited voter list would show that same are not certified copies. Hence, this Court is of considered opinion that the said voter lists are not admissible in evidence and the learned Tribunal was right in discarding the said voter lists as documentary evidence and in not relying on the same.

32. Moreover, as regards Exhibit 1, which is the school certificate, is concerned, which the petitioner is relying upon to show that he was born in 1960 and to show that his father's name is Bhuban Bepari, it appears that the photocopy of the school certificate has been exhibited by the petitioner himself. The said school certificate appears to have been issued by the

headmaster of the school, however, the said headmaster was not examined by the petitioner as a witness, neither the school certificate was proved by the said headmaster. Hence, we are of the considered opinion that the learned Tribunal was correct in holding that neither the said school certificate nor the content thereof were duly proved in accordance with law, therefore, we are of the considered opinion that the learned Tribunal was right in not relying on Exhibit-1.

- 33.** Similarly, as regards the Exhibit-2 is concerned, which is a landholding certificate issued by Assistant Settlement Officer, Srijangram Circle, was also not proved, in accordance with law. Even in the case of said Exhibit-2 it is not exhibited and proved by the Issuing Authority, nor it was proved by producing the contemporaneous official records on the basis of which the said landholding certificate had been issued. Hence, the same cannot be considered as a linked document to show that the name of the father of the petitioner is Bhuban Bepari. As such the Tribunal has rightly discarded the said document.
- 34.** As regards the additional document furnished by the petitioner, which is also a landholding certificate issued by Assistant Settlement Officer, Boitamari Circle, it appears that same was not exhibited even by the petitioner while deposing as DW-1. Hence, mere production of a document in itself is not proof of the same, as held by this Court in a Catena of Judgments. An

official document may be proved only on the basis of the contemporaneous registers or records maintained by the concerned office in that regard, and same has to be proved by the person who had issued the said Certificate or by any other authorized person, who is acquainted with the facts mentioned in the said Certificate on the basis of contemporaneous official records. Hence, by producing the said Land Settlement Certificate without placing and proving it before the Tribunal, the said document is also of no use for the petitioner.

- 35.** It is also a settled proposition of law that in so far as objection as regards the admissibility of a document is concerned, if a document is per se inadmissible in evidence, non-raising of objection by the State would not render such document as admissible.
- 36.** Hence, we found that the Tribunal was correct in not relying upon the documents, which were exhibited by the petitioner but were not duly proved in accordance with law.
- 37.** The petitioner has thus failed to establish his linkage with his projected father, Bhuban Chandra Bepari, by deducing cogent, reliable and admissible documentary evidence.
- 38.** It is, therefore, clear that the petitioner has failed to discharge his burden under Section 9 of the Foreigners Act, 1946, to prove that he is not a foreigner but a citizen of India.

- 39.** For the reasons discussed in the foregoing paragraphs, we do not find any reason to interfere with the impugned opinion/order of the learned Foreigners Tribunal, Bongaigaon No. 2 at Abhayapuri in Case No. BNGN/FT-2/APR/611/2016. Accordingly, this writ petition and same is dismissed being devoid of merit.
- 40.** The Interim Order passed earlier on 18.07.2018 stands vacated.
- 41.** The Registry is directed to send back the record of Case No. BNGN/FT-2/APR/611/2016 to the learned Foreigners Tribunal, Bongaigaon No. 2 at Abhayapuri with a copy of this judgment.
- 42.** Let also the Superintendent of Police (B) Bongaigaon as well as the Deputy Commissioner, Bongaigaon be also furnished with a copy of this judgment for their needful.

JUDGE

JUDGE

Comparing Assistant