

GAHC010153282018



2024:GAU-AS:12944

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

Case No. : WP(C)/4660/2018

SHIPRA RAKSHIT @ SHIPRA RANI DHAR
D/O. JATINDRA NATH DHAR, W/O. BIDYUT KUMAR RAKSHIT, R/O.
BILASIPARA TOWN, WARD NO. 4, P.O. AND P.S. BILASIPARA, DIST.
DHUBRI, ASSAM, PIN- 783348.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-01.

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI

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

4:THE DEPUTY COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

5:THE SUPERINTENDENT OF POLICE (B) DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

6:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-05

Advocate for the Petitioner : MD H R AHMED, MR. A ISLAM

Advocate for the Respondent : ASSTT.S.G.I., SC, ECI,MR. D BARUAH,SC, NRC,MS. A VERMA,SC, F.T,MR J PAYENG

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

ORDER

Date : 18.12.2024
(K.R. Surana, J)

Heard Mr. H.R. Ahmed, learned counsel for the petitioner. Also heard Mr. G. Pegu, 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 FT matters, respondent nos.3, 5 and 6; and Mr. H.K. Hazarika, learned Govt. Advocate for respondent no.4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 31.05.2018, passed by the learned Member, Foreigner's Tribunal 7th, Dhubri at Bilasipara in F.T. 7th Dhubri Case No. 102/BLP/17 (F.T. Case No. 1708/BLP/11), arising out of Ref. F.T. Case No. 1190/09, by which the petitioner was declared to be a foreigner of post 25.03.1971 stream.

3. Pursuant to receipt of summons from the learned Tribunal, the petitioner appeared in the proceedings and she had filed her written statement

along with certain documents. Thereafter, the petitioner had examined herself as DW-1, and on issuance of Court summon, the Head Master of Uttar Barpeta High School appeared and he was examined as DW-2. It appears from the record that the Govt. pleader for the State was absent and the DW-1 and DW-2 responded to the questions put by the Tribunal.

4. The record reveals that the following documents were exhibited by the petitioner, viz. (i) photocopy of Life Insurance Policy (Ext.-A); (ii) photocopy of certified copy of voters list of 1971 (Ext.-B); (iii) photocopy of certified copy of voters list of 1985 (Ext.-C); (IV) photocopy of certified copy of voters list of 1997 (Ext.-D); (v) photocopy of certified copy of voters list of 2010 (Ext.-E); (vi) photocopy of the school certificate dated 10.07.2017 (Ext.-F). All the documents were proved in original.

5. It may be mentioned that the evidence-on-affidavit by the petitioner was filed on 04.01.2018 and she was examined by the Tribunal on 28.03.2018. The evidence-in-chief of Abdul Mannan Sikdar, DW-2 was recorded on 28.03.2018, and on the same, he had answered the questions put by the Tribunal.

6. In the meantime, on a petition filed by the petitioner, by an order dated 04.01.2018, ordered the issuance of notice and to call for the issuing authorities of the documents to be proved. Such order was repeated on 13.02.2018, 21.02.2018 and 05.03.2018 and the DW-2 appeared on 28.03.2018 and pursuant to the notice issued by the learned Tribunal to the Election Officer, Barpeta, the said authority by a letter dated 20.01.2018 (available at page 44 of Tribunal's records) informed the learned Tribunal that the certified copy of electoral roll of 1971, 1985 and 1997 under Barpeta LAC received from the

Tribunal was verified by the Election Officer, Barpeta and found genuine and correct. A similar letter dated 06.02.2018 by the Election Officer, Barpeta is also available at page 52 of the Tribunal's records. Thus, it is seen that the petitioner did not prove the contents of the letter the letter dated 20.01.2018 as well as the letter dated 06.02.2018, sent by the Election Officer, Barpeta.

7. The Tribunal's records further revealed that the photocopies, which are referred to as Ext.-A to Ext.-F are proved in original. Moreover, from the examination of the DW-1 and DW-2 by the learned Tribunal, no questions were put to doubt any of the documentary exhibits. However, in the impugned opinion, the learned Tribunal had held that Ext.-A, B and C are not proved from the originals maintained with the connected lawful custodians and therefore, the said exhibits were rejected. Ext.-D and F were discarded as there was a discrepancy in the name of the petitioner, which is mentioned as "Sipradhar Dhar" in Ext.- D, whereas in Ext.-F, her name was written as "Shipra Rani Dhar" and it also had age discrepancy.

8. In view of the contents of Ext.-D, where the age of the petitioner is shown as 22 years, and in Ext.-F, which is the school certificate, her date of birth is shown as 16.01.1969 and therefore, as per the calculation made by the learned Tribunal, as per Ext.-D, her year of birth would be 1975 whereas as per Ext.-F, her age would have been 27 years and not 22 years as indicated in Ext.- D. Therefore, all the exhibited documents were found untrustworthy and therefore the petitioner was declared to be a foreigner post 25.3.1971 stream.

9. As indicated above, Ext.-B, C, D, and E were certified copies of the voters list of 1971, 1985, 1997 and 2010, which were all proved in original. On a perusal of the records, it appears that the said Ext.-B, C, D, and E are

photocopies of the certified copies of the voters list. In the considered opinion of the Court, voters list is a public record and a certified copy issued in respect of the voters list squarely covered within the meaning of public document of the Bharatiya Sakshaya Adhiniyam 2023, and can be proved by producing certified copies within the meaning of section 76 of the Bharatiya Sakshaya Adhiniyam 2023, which corresponds to section 74 and 75 of the Evidence Act, 1872.

10. In this regard, we find support from paragraph 21.7 of the decision of this Court, *dated 08.06.2018*, passed in *WP(C) 7669/2016, Borhan Ali @ Barhan Ali v. the Union of India & 3 Ors.*, reported in *2018 (4) GLT 392*.

11. As regards Ext.-A, the said document is a Life Insurance Policy of Jathindra Nath Dhar, bearing date of commencement of policy as 10.02.1965. An Insurance Policy is stated to be an agreed upon document for the purpose of NRC.

12. The said Life Insurance Policy is issued by the Life Insurance Corporation of India, which is a Government of India undertaking. The said Ext.-A also contains the insurance stamps, which indicate that the same was issued in the name of the person in whose favor the said policy was made.

13. Under such circumstances, when the correctness of the said Ext.-A was not even questioned by the learned Tribunal, the said evidence could not have been discarded without giving reasonable opportunity to the petitioner to prove this said document by calling the authorities.

14. Ordinarily, such an observation is made in light of the unique facts of this case, which is not intended to be cited as a precedent in view of the fact that neither the mode of proof nor the accessibility of the documents was

questioned when the LIC policy was exhibited as Ext.-A.

15. Although the learned standing counsel for the FT matters has made a submission in support of the impugned opinion, but the same is not elaborately discussed in view of the fact that not only the petitioner had proved Ext.-B, C and D, which are the certified copies of the voters lists referred above, but the Election Officer has also sent to the Tribunal their letter to the effect that the certified copies of electoral roll of 1985, 1997 and 1971, which was sent for verification, was verified and found to be genuine and correct.

16. Accordingly, the Court is of the considered opinion that the petitioner is required to be given an opportunity of proving Ext.-A, B, C and D in a manner on which the petitioner may be so advised.

17. Accordingly, the objection made by the learned standing counsel for the FT matters is not sustained.

18. Accordingly, this writ petition stands allowed by setting aside the impugned opinion dated 31.05.2018, passed by the learned Member, Foreigner's Tribunal 7th, Dhubri at Bilasipara in F.T. 7th Dhubri Case No. 102/BLP/17 (F.T. Case No. 1708/BLP/11), arising out of Ref. F.T. Case No. 1190/09.

19. Resultantly, the matter is remanded back to the learned Member, Foreigner's Tribunal 7th, Dhubri at Bilasipara.

20. The petitioner is directed to appear before the learned Member, Foreigner's Tribunal 7th, Dhubri at Bilasipara without awaiting for any notice from the learned Tribunal and produce a certified copy of this order within a period of 30 (thirty) days from the date of this order. On appearance of the

petitioner, the learned Tribunal shall pass a fresh opinion in accordance with law.

21. In the event the petitioner does not appear before the learned Tribunal within the 30 (thirty) days time allowed, it would be open to the learned Tribunal to treat the petitioner as absent on call and pass an *ex parte* opinion.

22. It is provided that the petitioner shall not be arrested and deported from the Country within 30 (thirty) days from the date of this order.

23. The records of the Tribunal be sent back expeditiously.

24. This writ petition stands allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant