

GAHC010155942019



2024:GAU-AS:10137

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

Case No. : WP(C)/4763/2019

MANIKJAN BIBI
W/O- MD. HASEN ALI, D/O.- LT. ABDUL ALI @ A. ALI AND MALEKA BANU,
R/O- VILL. MOIRABARI, P.O. AND P.S. MOIRABARI, PIN- 782126, DIST.
MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 110001.

2:THE CHIEF ELECTION COMMISSIONER OF INDIA
ASHOK ROAD
NEW DELHI- 110001.

3:THE STATE OF ASSAM
REP. BY ITS SECRETARY
GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007.

5:THE STATE COORDINATOR
O/O THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS
(NRC)
ASSAM
1ST FLOOR

ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI- 781005.

6:THE DEPUTY COMMISSIONER
MORIGAON
DIST.- MORIGAON
ASSAM
PIN- 782104.

7:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST. MORIGAON
ASSAM
PIN- 782104

Advocate for the Petitioner : MR. K LAHKAR, MS R BISWAS

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,SC, ECI,SC, NRC

:: PRESENT ::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. K.M. Hassan, Advocate.
For the Respondents	:	Mr. R. Talukdar, Government Advocate. Assam. Mr. A.I. Ali, Standing Counsel, Election Commission of India. Mr. G. Sarma, Standing Counsel, Foreigners' Tribunal, Assam.
Date of Hearing	:	01.02.2024.
Date of Judgment	:	04.10.2024.

JUDGMENT AND ORDER (CAV)

(Parthivjyoti Saikia, J)

Heard Mr. K.M. Hassan, learned counsel appearing for the petitioner. Also heard Mr. R. Talukdar, learned Government Advocate; Mr. A.I. Ali, learned Standing Counsel, Election Commission of India and Mr. G. Sarma, learned Standing Counsel, Foreigners' Tribunal, Assam.

2. This is an application under Article 226 of the Constitution of India whereby the opinion dated 30.04.2019 passed by the learned Member, Foreigners' Tribunal-5th, Morigaon, Assam in Case No.F.T. 407/2017 is under challenge.

3. On the basis of a reference made by the competent authority, notice was issued to the petitioner to prove her Indian citizenship. The notice was served upon the petitioner and she appeared before the Tribunal and filed her written statement wherein she claimed to be an Indian citizen.

4. In her written statement, the petitioner claimed to be the daughter of Abdul Ali and Maleka Bhanu of Lengribori village under Moirabari Police Station. The petitioner also claimed that the Headmaster of Lengribori Primary School has given her a certificate stating that she is the daughter of Abdul Ali. According to the petitioner, she has been casting vote in the elections since 1997.

5. In order to prove her citizenship, the petitioner examined herself and four other witnesses. The petitioner also exhibited the following documents in support of her citizenship.

Exhibit-A - 1966 voter list of petitioner husband's father namely Abdul Gafur.

Exhibit-B - 1970 voter list of petitioner husband's parents.

Exhibit-C - 1997 voter list of petitioner husband and his parents.

Exhibit-D - 1977 voter list of petitioner husband's parents.

Exhibit-E - 2010 voter list of petitioner along with her husband's and his parents.

Exhibit-F - 2005 voter list of petitioner along with her husband's and his

parents.

- Exhibit-G - 1975 voter list of petitioner husband's parents.
- Exhibit-H - 2016 voter list of petitioner husband and his father.
- Exhibit-I - 2017 voter list of petitioner's daughter Sultana Begum.
- Exhibit-J - School certificate of petitioner's daughter Sultana Begum.
- Exhibit-K - School Transfer certificate of petitioner.
- Exhibit-L - Sale Deed of land purchased by petitioner husband's father.
- Exhibit-M - Sale Deed of land purchased by petitioner.
- Exhibit-N - Certificate issued by village Headman of Lengribori to the petitioner.
- Exhibit-O - Certificate issued by village Headman of Moirabari to husband.
- Exhibit-P - 1965 voter list in the name of petitioner's parents.
- Exhibit-Q - 1970 voter list in the name of petitioner's parents.
- Exhibit-R - Lengeribori Panchayat certificate issued to the petitioner.
- Exhibit-S - Birth certificate of petitioner's daughter Asmiya Begum.
- Exhibit-T - Jamabandi copy of land in the name of petitioner's father.

6. Finally, the Tribunal held that the petitioner Manikjan Bibi failed to establish her link with Abdul Ali and Maleka Bhanu. The Tribunal held that the evidences of DW-2 Hasen Ali, DW-3 Mojamill Hoque and DW-4 Mafij Uddin are unbelievable.

7. We have gone through the evidences of those defence witnesses.

8. DW-2 is the husband of petitioner Manikjan Bibi. He has stated that Ext.A, B, D and G, which are the voter lists of 1966, 1970, 1977 and 1975, containing the names of his father Gofur Ali and Salemon Nessa respectively. Similarly, Ext.C, E and F are the voter lists of 1997, 2010 and 2005 containing the name of his parents and his wife i.e. the petitioner.

9. This witness exhibited Ext.K, which is a school transfer certificate belonging to the present petitioner.

10. The witness Mojamill Hoque claimed to be the brother of the present petitioner. He also the son of Abdul Ali and Maleka Bhanu. He has stated that his father Abdul Ali

had two wives. The name of the other wife is Noorjahan.

11. Without proving any documents, Mojamill Hoque has stated that the names of his parents Abdul Ali and Maleka Bhanu appeared in the voter lists of 1965 and 1970.

12. The third witness is Mafij Uddin. He knows the petitioner since her birth. He has not exhibited any documents in support of his evidence.

13. The fourth witness is Oli Ullah who is the Headmaster Uttar Lengeribori L.P. School. He spoke in favour of Ext.K, which was issued by him. He has stated in his evidence that he has been working as the Headmaster of the said school since 2015. He has admitted that Ext.K was not issued upon the official Letter Head Pad of the school.

14. The Tribunal disbelieved the evidence of Oli Ullah. We have decided to agree with the Tribunal because the Ext.K was issued on the date on which the petitioner filed the written statement before the Tribunal. It can be easily said that this document came into existence only for the purpose of the proceeding before the Tribunal.

15. Ext.K contains the National Emblem. In WP(C) No.3071/2016, this Court has held that unauthorized use of National Emblem renders a document inadmissible in evidence.

16. There is no doubt that Ext.K is the only document relied upon by the petitioner to prove her linkage with her parents Abdul Ali and Maleka Bhanu. Ext.K was not proved by the petitioner on the basis of any contemporaneous record. Therefore, the petitioner failed to prove her linkage with Abdul Ali and Maleka Bhanu.

17. We are of the opinion that the impugned opinion dated 30.04.2019 of the Foreigners Tribunal-5th, Morigaon in Case No.FT.407/2019 does not call for any interference. The Tribunal has correctly appreciated the evidence and arrived at a correct finding.

18. We find that the present writ petition is devoid of merit and therefore stands dismissed accordingly.

19. The interim order passed earlier on 04.09.2019 is hereby vacated/ recalled.

20. Send back the records of Case No.FT Case No.407/2017 to the Foreigners Tribunal-5th, Morigaon along with a copy of this order. Also communicate this order to the Deputy Commissioner, Morigaon and the Superintendent of Police (Border), Morigaon for their needful.

JUDGE

JUDGE

Comparing Assistant