

GAHC010193802020



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

Case No. : Review.Pet./116/2021

ROKIA KHATUN @ ROKIYA KHATUN
W/O- MOINAL HAQUE @ MOYNAL HAQUE, C/O- KASHEM ALI, VILL.-
KALYANPUR, P.S. BAGAUN, DIST.- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
GOALPARA
DIST. GOALPARA
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
ASSAM

5:THE OFFICER IN CHARGE
BAGUAN POLICE STATION
DIST. GOALPARA
ASSA

Advocate for the Petitioner : MR. M U MAHMUD, MS R ALI,MR S H MAHMUD

Advocate for the Respondent : SC, F.T, GA, ASSAM,SC, ECI,SC, NRC

Linked Case : WP(C)/4274/2017

ROKIA KHATUN @ ROKIYA KHATUN
W/O MOINAL HAQUE @ MOYNAL HOQUE
VILL-KALYANPUR
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DIST.- GOALPARA
ASSAM

Advocate for : MR.S ISLAM
Advocate for : appearing for THE UNION OF INDIA and 4 ORS.

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

ORDER

Date : 29.10.2024

(K.R. Surana, J)

Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. D.J. Das, learned CGC appearing for respondent no.1; Mr. J. Payeng, standing counsel for Home Department for Foreigner's matter, representing respondent nos. 2, 4 and 5; and Mr. P. Sarmah, learned Govt. advocate, representing respondent no.3.

2) The learned counsel for the petitioner has submitted that aggrieved by the opinion dated 30.05.2017, passed by the learned Foreigners' Tribunal 4th, Goalpara, Assam, in Case No. F.T.(G-4) 499/2016, the petitioner was held to be a foreigner of post 1971 stream, the petitioner had filed a writ petition before this Court, which was registered as W.P.(C) No. 4274/2017. This Court by order dated 11.06.2019, dismissed the said writ petition by holding that there was no perversity in the opinion and accordingly, the said opinion was not interfered with.

3) By referring to the grounds of review, it was submitted that while deciding the writ petition, being W.P.(C) No. 4274/2017, by the aforesaid order dated 11.06.2019, this Court did not consider (a) the voter list of 1966 (Ext.A); (b) voter list of 1970 (Ext.B); (c) voter list of 1985 (Ext.C); (d) kabin-nama dated 12.08.2008 containing the name of the petitioner, Rokia Khatun and her father (Ext.D); and (e) registered sale deed no. 9310 dated 11.12.1975, containing the name of Jubber Ali, projected father of the petitioner (Ext.E) in their proper perspective and the said evidence was disregarded although the

names of the grand-father and father of the petitioner were recorded therein.

4) It is submitted that the name of (i) the petitioner; (ii) petitioner's grand-mother, Moziron Nessa, (iii) petitioner's mother, Fatema Bibi; and (iv) Rafiqul Islam, petitioner's brother have been included in the draft NRC of 2019. Accordingly, it is submitted that on the said subsequent development, the impugned order dated 11.06.2019, passed by this Court in W.P.(C) No. 4274/2017 be reviewed.

5) No other point was raised by the learned counsel for the petitioner. However, in support of his submission, the learned counsel for the petitioner has cited the following cases, viz., (a) (2006) 1 SCC 479; (b) (2004) 12 SCC 360; (c) (2004) 4 SCC 446; (d) W.P.(C) 5158/2018, decided by the coordinate Bench of this Court on 20.02.2019; and (e) Review Pet No. 58/2019, decided by coordinate Bench of this Court on 25.04.2022. It pains us to record that the learned counsel for the petitioner has merely given the citations without even referring to the name of the parties and he has also not submit a printed copy of the said case citations and did not state anything about the facts on which the cited cases were decided. The learned counsel for the petitioner had also referred to the legal postulate of nine points of law, without elaborating how the said principle of possession was applicable on the facts and circumstances of this case.

6) Therefore, just because the Court is dealing with the issue of citizenship of the petitioner, the Court has been compelled to get a printout of the cases, perused the cases without getting any assistance from the learned counsel for the petitioner as if the entire burden is on the Court to decide a matter.

7) After having perused the cited case, it would have been appropriate for the Court to record that it is unnecessary to deal with the cases cited as none of those cases help the petitioner in any manner. But as mentioned herein before, only by thinking of the person litigating and the right of her citizenship involved, we are briefly referring to those cases below:-

- a. (2006) 1 SCC 479:- This is the case of *U.P. State Brassware Corpn. Ltd. v. Uday Narayan Pandey*. The case relates to claim of back-wages to a retrenched workman, purportedly in violation of U.P. Industrial Disputes Act, 1947 (equivalent to section 25-F of the Industrial Disputes Act. The Labour Court had passed the order relying on the certificate issued by the petitioner without holding that in the preceding 12 months, the workman had worked for 240 days, which was not taken note of by the Labour Court and the High Court. Under those facts, the Supreme Court of India had made an observation that Section 11-A of the Industrial Disputes Act empowers the Labour Court, the Tribunal and the National Tribunal to give appropriate relief in case of discharge or dismissal of workmen.
- b. (2004) 12 SCC 360:- This is the case of *Food Corporation of India v. Assam State Cooperative Marketing and Consumers' Federation Ltd.* In the said case, the FCI had paid excess amount of Rs.39,36,810/- to the respondent against procurement of paddy of *kharif* season and accordingly, suit for recovery of money was filed, which was dismissed and appeal before High Court was also dismissed. Under such facts, the Supreme Court of India held that under section 18 of the Limitation Act, 1963, the acknowledgement by the respondent had extended the period of limitation and accordingly, the appeal was allowed.

- c. (2004) 4 SCC 446:- This is the case of *Ouseph alias Thankachan v. State of Kerala*. This case relates to challenge by the appellant against his conviction under section 22 of the NDPS Act, 1985, for the reason that he was found in conscious possession of the contraband. On facts of the said case, as it was found that the appellant had been in jail for beyond his sentence, the conviction of the appellant was altered by the Supreme Court of India and he was directed to be released.
- d. *Habibur Rahman & Anr. v. The State of Assam & Ors., Review Pet No. 58/2019, decided on 25.04.2022*: This case relates to settlement of mining contract areas on re-sale notice by the Forest Department. On the contention that the authorities had accepted the amount from the petitioners, a legal right of the petitioner persists and accordingly, without expressing on the claims of the petitioner, in exercise of power of review, the petitioner was permitted to make a representation before the authorities for consideration.
- e. *Jamila Khatun v. The Union of India & Ors., W.P.(C) 5158/2018, decided on 20.02.2019*: This case relates to challenge to opinion rendered by the Foreigners' Tribunal. Under the facts of the case, the Court had expressed that a question arises as to whether Abdul Jalil, the person deposing as DW-2 was same person as 'Azalil', whose name appears in voter list of 1971 and accordingly, the matter was remanded back to the learned Foreigners' Tribunal to allow the proceedee to lead evidence to show that above named persons were same.

8) Thus, it is seen that no effort was made by the learned counsel for the petitioner to show how the cases cited by him helps the petitioner. Therefore, it appears to be total wastage of Court time to discuss this cited

case. We deprecate such practice.

9) In the present case, it has been urged that the name of the petitioner and three others are entered in the draft NRC of 2019. The learned counsel for the petitioner has not brought anything on record that the draft NRC of 2019 has been finalized. It is also not submitted that whether the draft NRC shall prevail over the opinion of the learned Foreigners' Tribunal. It has also not been urged that after final NRC is published, there is legal prohibition for the Foreigners' Tribunal to entertain a reference regarding those whose names are entered therein.

10) No submission was made as to what was the correct method of appreciating the exhibited documents or how in exercise of review jurisdiction the finding returned on an exhibited document can be reversed.

11) Therefore, this is not a case where there is any error apparent on the face of the record. This is also not a case where it is demonstrated that any pleading or document of the writ petition was misread and/or misconstrued by this Court. It is also not the case of the petitioner that a perverse finding was rendered in the impugned order. It is also not the case of the petitioner that any document came to the notice of the petitioner subsequently and was not produced despite exercise of due diligence.

12) Therefore, on all counts, the prayer for review, as made in this review petition fails and accordingly, this review petition is dismissed.

13) Before parting with the records, we would like to put it on record that only because of the consideration that the valuable right of citizenship is the issue raised by the petitioner, we have refrained ourselves from imposing exemplary cost on the learned counsel for the petitioner for the casual and

cavalier manner in which his submissions was made and cases were cited by him in this case, which has resulted in sheer wastage of valuable time of the Court.

JUDGE

JUDGE.

Comparing Assistant