

GAHC010195252024



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

Case No. : WP(C)/4864/2024

AJUPA KHATUN @ AJUFA KHATUN
D/O- OWAJUDDIN,
W/O- AKKAS ALI,
R/O- VILLAGE- RAIPUR, P.S.- BARPETA ROAD,
DISTRICT- BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
GOVT. OF INDIA, NEW DELHI-01.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
DEPARTMENT OF HOME AFFAIRS

GOVT. OF ASSAM
DISPUR GHY-06.

3:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST.- BARPETA
ASSAM

PIN- 781301.

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND DIST- BARPETA
ASSAM

PIN- 781302.

5:THE STATE COORDINATOR OF NRC
ASSAM
HOUSEFED COMPLEX
2ND FLOOR

BANPHOOL NAGAR
DISPUR GUWAHATI-6.

6:THE ELECTION COMMISSION OF INDIA
NEW DELHI-01

Advocate for the Petitioner : MR. A R SIKDAR, MR. O FARUK, MS M SARMA, MR. S I
TALUKDAR

Advocate for the Respondent : DY.S.G.I., SC, ECI, SC, F.T, GA, ASSAM

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

ORDER

23.10.2024

(K.R. Surana, J.)

Heard Mr. A. R. Sikdar, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned Standing Counsel for the respondent Nos. 2 and 4. Mr. P. K. Medhi, learned CGC, Ms. Medhi, learned counsel appearing on behalf of Ms. P. Barua, learned Standing Counsel for the respondent No.6, Mr. H. K. Hazarika, learned counsel for the respondent No.3 are present.

2. The order dated 06.09.2024, passed by the learned Member, Foreigners Tribunal, Barpeta 11th, Sorbhog is assailed in this writ petition filed under Article 226 of the Constitution of India.

3. In Case No. BFT (11TH) F.T.-1006/2017, upon receipt of notice of the proceedings, the petitioner appeared before the learned Tribunal and

filed a written statement, along with her evidence on affidavit as DW-1 and also adduced evidence of her husband as DW-2 and certain documents were exhibited. Thereafter on 12.08.2024, the petitioner had filed a petition before the learned Tribunal with a prayer to accept the petition and pass an order to give seal and signature of the Tribunal and allow the petitioner to take steps for authentication report of voters list of the year 1966, 1970, 1985, 1989, 1997, 2005, 2010 and 2016 for the ends of justice. It is projected that the petitioner had approached the Election Office and Barpeta / North Salmara at Abhayapuri for such authentication report which was denied.

4. The learned Tribunal by an order dated 06.09.2024, rejected the said petition on the ground that it lacked any merit, however, it was recorded that there is no doubt as to authenticity of those documents. Accordingly, the matter was fixed for argument.

5. The learned counsel for the petitioner, has submitted that in the proceedings before the Foreigners Tribunal, the burden is on the petitioner to prove that he/she is a citizen of India not a foreigner. Therefore, the evidence tendered by the petitioner should be to her satisfaction.

6. By referring to an opinion dated 03.10.2023, passed by the same learned Tribunal in case no. (Bpt/11th) F.T. 727/2016, which is a proceeding between the State Vs Maymana Khatun, it is submitted that the learned Tribunal had rejected the evidence in respect of the exhibited voters list as those documents were not proved in accordance with law. Accordingly, it is submitted that as it is the burden of the petitioner to prove the documents, in view of the said referred opinion dated 03.10.2023 passed in another proceedings, there is likelihood that the learned Foreigners Tribunal may

take a similar view in the present case, which will prejudice the petitioner. It is further submitted that the State would not suffer any prejudice if an authentication report is procured by the petitioner and proved in accordance with law.

7. It is further submitted that there are some other documentary exhibits which need to be proved in accordance with law. Therefore, the petitioner is aggrieved by the impugned order dated 06.09.2024, as the evidence of the petitioner was closed and the petitioner has lost her right to call witnesses to prove certain exhibited documents.

8. Per contra, the learned Standing Counsel for the Home Department, has submitted that the challenge to the impugned order dated 06.09.2024 is premature, as the learned Foreigner's Tribunal, having recorded that there is no doubt regarding the authenticity of those documents, has not rejected the evidence of the petitioner on the grounds that the authenticity of the documents was not proved.

9. In order to counter the submissions made by the learned Standing Counsel for the Home Department, it is submitted that the petitioner would suffer prejudice if her evidence is rejected on the grounds that the documents were not proved in accordance with law.

10. We have considered the materials available in the writ petition, the contents of the records received from the learned Tribunal, and the submissions made at the Bar.

11. It may be mentioned that in the petition filed on 12.08.2024, the only prayer is to pass an order to provide the seal and signature of the Tribunal and to allow the petitioner to take steps for an authentication report of the voters list referred to above. Thus, there is no prayer to call

for witnesses to prove any other documentary exhibits.

12. In so far as the prayer to allow the petitioner to take steps for an authentication report of the voters list referred above, we have not been shown any provision under the Representation of the People Act or any rules or notifications made or framed thereunder which envisages the issuance of authentication report of the voters list. Rather, we find that the voter is entitled to a certified copy of the voters list relevant to the concerned petitioner. Therefore, as the Court is exercising certiorari jurisdiction, the Court should be slow in passing an order providing for an authentication report to the petitioner which is not envisaged under the Representation of the People Act or any rules or notifications framed thereunder, because it is always open to the petitioner to obtain a certified copy of the concerned voters list. In this regard, we have also considered the submissions made by the learned Standing Counsel for the Election Commission of India, who also submits that if anyone desires a certified copy of a particular voters list and if that relates to his or her entry in the voters list, such a voters list is permissible to be issued to the concerned applicant.

13. We take note of the fact that on a petition that was filed on 12.08.2024, the learned Foreigner's Tribunal has passed an order on 06.09.2024, with certain observations already referred to hereinbefore. Thus, we have no reason to doubt that the learned Tribunal would not take notice of its order dated 06.09.2024, when adjudicating the matter and rendering the opinion in the proceedings against the petitioner.

14. Therefore, only if the learned Foreigner's Tribunal passes an order which is contrary to the observations made in the order dated 06.09.2024,

it would give rise of a cause of action to the petitioner to question the same in a manner as she may be so advised.

15. However, in respect of any other prayer that the petitioner may have, it will always be open to the petitioner to take such recourse as she may be so advised.

16. It is a settled law that in exercise of the certiorari jurisdiction, it is not open to the Writ Court to substitute its view with the order passed by the learned Foreigners Tribunal, when the order is not found to be vitiated by any error apparent or perversity.

17. As we have already held that the issuance of a authentication report of the voter list could not be demonstrated by the petitioner from any provisions of the Representation of the People Act or any rules or notification framed or issued thereunder, we do not find any reason to interfere with the impugned opinion dated 06.09.2024, passed by the learned Member, Foreigners Tribunal, Barpeta 11th, Sorbhog.

18. Accordingly, with the observations as made hereinbefore, this writ petition stands closed.

19. Let the records of the Tribunal be returned forthwith.

20. The petitioner shall appear before the learned Foreigners Tribunal on 14.11.2024, and by producing a certified copy of this order seek further instructions from the said learned Tribunal.

JUDGE

JUDGE

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Comparing Assistant