

GAHC010198282019



2024:GAU-AS:10107

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 6293 of 2019

Musstt. Lal Bhanu @ Lalbhanu Nessa, age 38 years,
Wife of Md. Jarif Ali,
Daughter of Late Abul Miya @ Abdul Hussain
Resident of village - Baghpari,
Post Office – Mangaldai,
Police Station - Mangaldai
District - Darrang, Assam.
Pin – 784125

.....Petitioner

-Versus-

1. The Union of India,
Represented by the Secretary to the
Government of India, Ministry of Home Affairs,
Shastri Bhawan, Tilak Marg,
New Delhi - 110001.

2. The State of Assam, Represented by the

Commissioner and Secretary to the Government of Assam,
Home Department, Dispur, Guwahati-781006.

3. The Deputy Commissioner, Mangaldai,
District – Darrang, Assam, PIN- 784125.
4. The Superintendent of Police (Border),
Mangaldai, District – Darrang,
Assam, PIN- 784125.
5. The Election Commission of India, Through its
Secretary Nirvachan Bhawan,
New Delhi, PIN - 110001.
6. The State Coordinator,
National Registrar of Citizens (NRC), Assam,
Bhangagarh, Ghy-05.

.....Respondents.

Advocates for the petitioner: Ms. R.S. Deuri.

Advocate for the respondents: Mr. G. Sarma, SC, FT,
Mr. P. Sarma, Addl. Sr. Govt. Advocate, Assam,
Mr. A I Ali, SC, ECI.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Hearing : 02.04.2024
Date of Judgment : 03.10.2024

JUDGMENT AND ORDER (CAV)

(Susmita Phukan Khaund, J.)

Heard Ms. R.S. Deuri, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2 & 4, Mr. P. Sarma, learned Additional Senior Government Advocate, Assam for the respondent No. 3 as well as Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent No. 5.

2. The petitioner Musstt. Lal Bhanu @ Lalbhanu Nessa has filed this application under Article 226 of the Constitution of India with prayer for issuance of a writ in the nature of certiorari, mandamus or any other appropriate writ, quashing the opinion/order dated 30.04.2019 passed by the learned Member of Foreigners' Tribunal (1st) Mangaldai in connection with F.T. Case No. 3057/2011, declaring the petitioner as a Foreigner/Illegal Migrant, who had entered into India (Assam) on or after 25.03.1971 .

3. The genesis of the case was that the Superintendent of Police (Border) (SP for short), Mangaldai, Darrang through the Reference Case No. 134/2010 expressed his doubt over the nationality of Lal Bhanu, wife of Md. Jarif Ali (hereinafter referred to as the petitioner). Thereafter, F.T. Case No. 3057/2011 was registered and notices were issued to the petitioner, who entered appearance and filed written reply/written statement (WS for short) along with photocopies of documents, denying that she is a foreign national. To substantiate her stance, the petitioner also filed evidence-in-chief on affidavit and submitted documents, and examined herself as DW.1.

4. It is contended that the learned Tribunal has erred while assessing oral and

documentary evidence of the petitioner by not taking into consideration Exhibit Nos. 1, 3, 4 and 5 and by discarding Annexure-1 without assigning any valid reasons. It is contended that the decision of the Tribunal holding that the Voters List of 1966 is a voters list of another person which has been picked up by the petitioner to establish her lineage with her projected grandfather is perverse and is thus, liable to be set aside. It is averred that the Tribunal has failed to assess the evidence and other materials on record in its proper perspective and has discarded the documentary evidence without any valid grounds and without verifying the documents from the issuing authority.

5. It is contended that the impugned order/opinion has infringed upon the fundamental rights of the petitioner enshrined in the Constitution of India, in violation of the Articles 14, 19 and 21 of the Constitution. Thus, this is a fit case to exercise the extraordinary jurisdiction under Article 226 of the Constitution of India and set aside and quash the impugned opinion/order dated 30.04.2019 passed by the learned Tribunal. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in ***Sirajul Hoque Vs. State of Assam***; reported in **(2019) 2 SCC (CRI) 611** wherein it has been held that :

“3. We have heard learned counsel for both sides extensively and have gone through the documents produced by the appellant ourselves. On a perusal of the same, we find that a number of documents have been relied upon by the appellant starting with a voters’ list of his grandfather Kematullah in village Sotobashjani. There is no doubt that the great grandfather’s name Amtullah appears as Amtullah throughout the document. Equally, there is no doubt about the father’s name which appears as Hakim Ali throughout. The only discrepancy found is that in some of the documents Kefatullah later becomes Kematullah. However, what is important to note is that his father’s name Amtullah continues as Amtullah and the other family members associated continued as such. Also produced are NRC Registration details of the year 1971 of the grandfather who is noted to be Kefatullah in this document. Other voters lists are then produced where the letter F becomes the letter M with other family

names remaining the same. In fact, the appellant has himself produced a document of 1981 from the Income Tax Department giving his Permanent Account Number. Apart from these documents, certain other later documents have also been produced including photo identity cards issued by the Election Commission of India and identity cards issued to his brother including voters lists in which the appellant's name appears.

4. Having gone through these documents, we are of the view that it is not possible to state that Kematullah is not the same despite being named Kefatullah in some of the documents. This being so, the grandfather's identity, father's identity etc. has been established successfully by the appellant. Further, the mere fact that the father may later have gone to another village is no reason to doubt this document.

5. We, therefore, set aside the judgment of the High Court as well as the Foreigner's Tribunal and allow the appeal.

6. As a result thereof, the appellant is liable to be set free at once."

6. *Per contra*, it is submitted on behalf of the respondents that the petitioner has failed to establish her linkage with her grandfather. The ratio of the decision of the Hon'ble Supreme Court in **Sirajul Hoque's case (supra)**, is not applicable to this case, as unlike the **Sirajul Hoque's case (supra)**, there are far too many irregularities and discrepancies in this case.

In support of his submissions, the learned Standing Counsel for the Home Department Mr. G. Sarma, has relied on the decision of this Court in **Md Babul Islam –Vs- The State of Assam and 4 Others**, in connection with WP(C) No. 3547/2016, dated 09.05.2018, wherein it has been observed that the PAN Cards or the Electoral Identity Cards cannot be relied on, to prove the citizenship of a person. It is further submitted that the other documents submitted by the petitioner are post 1971, which are not relevant in connection with this case. The ration card relied upon by the petitioner does not contain the year. It is further submitted that the Tribunal has ascribed all the reasons for dismissing the petitioner's evidence with clarity and thus, the petition is liable to be dismissed as the petition is bereft of

merits.

7. We have given our thoughtful consideration to the submissions at the bar with circumspection.

8. The point for determination taken up by the learned Tribunal was that whether the petitioner is a "citizen of India or a foreigner" within the meaning of the expression 'foreigner' as described in the Foreigners Act, 1946 (hereinafter referred to as the Act of 1946).

9. It was held by the Tribunal that the Exhibit – 1 , the certified copy of the Voters List of 1966 depicts that the petitioner's projected father's name is Abul Miya, S/O Foyez, age 28 (Twenty Eight) years and her mother is Kumala Bibi, but in her cross examination the petitioner, as DW.1, has admitted on oath that Exhibit – 2 is the Elector Photo I/D Card of her mother vide No. FCM 1441630, which reflects her mother's name as Kamala Beowa, age 58 (Fifty Eight) years and her father's name is shown as Abdul Hussain instead of Abul Miya. It was also held by the Tribunal that as her mother's age was shown as 58 (Fifty Eight) years in Exhibit – 2, then the date of birth of the petitioner's mother would be 1955 and her age would have been 12 (Twelve) years in the year 1966. It was held that by the Tribunal that Exhibit – 1 i.e. the Voters' List of 1966 is contradictory to the Elector Photo I.D., Exhibit – 2. It would not have been possible for Kumala Bibi to cast her vote at the age of 12 (Twelve) years contrary to the Voters List of 1966, wherein her age is shown as 23 (Twenty Three) years.

10. It was further held by the Tribunal that the name of Abdul Hussain has been projected as Abul Miya, S/O Foyez and the name of Kamala Beowa has been projected as Kumala Bibi by the petitioner to suit her purpose, but the petitioner has failed to establish that Abdul

Hussain and Abul Miya is the same person, and Kamala Beowa and Kumala Bibi is the name of one person i.e. the petitioner's mother. It was also held by the Tribunal that the petitioner, DW.1 has failed to establish that her father Abdul Hussain was son of Foyez, and due to discrepancies galore, the petitioner has failed to establish the linkage of her father with Foyez, who was projected as her grandfather. It was held by the Tribunal that the petitioner has picked up voters list of different persons of another family (Exhibit – 1), claiming them to be her grandfather, father and mother, to suit her purpose.

11. The learned Tribunal has not accepted Exhibit – 1 in the light of the decision of this Court in ***Md. Fakiruddin –Vs- Union of India and Others***, in WP(C) No. 4512/2016 wherein it has been held that **a certified copy of the voters list, has to be proved on the basis of primary evidence** i.e. by comparing with the Electoral Roll in origin and on the basis of testimony of lawful custodian of the primary evidence. The certificate of the Panchayat Secretary of Bandia Gaon marked as Annexure-1 was also not accepted by the Tribunal as evidence, as mere filing or accepting of a document without proving its contents is inadmissible in evidence and as such, cannot be relied upon.

12. Exhibit – 3 i.e. the Elector Photo I.D. was not accepted by the Tribunal as because an Elector Photo I.D card issued by the Election Commission does not validate Indian citizenship. It was observed by the Tribunal that long stay of a person in a country or enlistment of a person's name in the Elector Photo I.D. Card, *per se* are no proof of citizenship. The Exhibit – 5, family Ration Card was rejected as the document was obtained after 1971. The Kabin Nama, Exhibit – 4 was executed on 01.08.2006 and was thus not accepted by the Tribunal stating that the documents obtained by the petitioner after 1971, could not establish her

parents' citizenship in Indian soil prior to 1971 as per Section 6.A of the Citizenship Act, 1955 (the Act of 1955, for short).

13. It was observed by the Tribunal that the petitioner has failed to discharge the burden of proof as envisaged under Section 9 of the Act of 1946 as held in ***Sarbananda Sonowal – Vs. Union of India and others***, reported in **(2005) 5 SCC 665**.

14. The question that falls for consideration in this case is that whether the petitioner was successful in discharging her burden as mandated under Section 9 of the Act of 1946.

Discussions and Decisions :

15. Through the WS and the evidence-on-affidavit filed by the petitioner who has adduced her evidence as DW.1, she has stated that she was born and brought up at village No. 5, Nangoli, Mouza – Rangamati, Police Station – Mangaldai, District – Darrang (Assam). She has proved the Voters List of 1966 as Exhibit 1, which is reflected herein below:

“VOTER LIST

71 No. Rangamati (Schedule Caste) Constituency of the Legislative Assembly Election Name List for 1966 year

District – Darrang Police Station – Mangaldai Mouza – Rangamati

Sub-Division – Mangaldai Village – 5 No. Nangoli Part No. 136

1	2	3	4	5	6
353	76	Fayaj Sonaru	Nakul	M	59

354		Champa Bibi	Fayaj	F	50
355		Taju Seikh	Do	M	35
356		Aaj Mamud	Do	M	32
357		Abul Miya	Do	M	28
358		Fujuli Nessa	Taju	F	30
359		Abiran Beowa	Nakul Sonaru	F	77
360		Santa Nessa	Aaj Mamud	F	25
361		Kamala Bibi	Abul	F	23

N.B. The aforementioned figures in serially are (1) Serial No. (2) House No., (3) Name of the voter (4) Father/Mother/Husband's name (5) Male/Female and (6) Approx age on dated 1/1/66."

16. The petitioner through her WS and evidence-in-affidavit has stated that she is an Indian citizen by birth and her place of birth was Nangoli Gaon under Mangaldai Police Station in the erstwhile district of Darrang. Her father Late Abul Miya was an Indian citizen by birth as his place of birth was No. 5 Nangoli village under Rangamati Mouza, Police Station – Mangaldai and District – Darrang under 71 No. Rangamati LAC. His name is reflected in the Voters List of 1966 at Sl. No. 357. It is further submitted that although the petitioner's father and his siblings were born in No. 5 Nangoli Gaon, yet they had moved to Bakpari Gaon and started residing at Bakpari Gaon.

17. It has been submitted by the learned counsel for the respondents that the year of

shifting has not been mentioned by the petitioner in a tacit manner. The petitioner has exhibited the Voters List of 1966 but she has not mentioned the names of her uncles and aunts.

18. Through the evidence and the pleadings, it has been submitted by the petitioner that her mother is also a citizen of India by birth and she has been exercising her right to franchise and the petitioner has submitted the Elector Identity Card of her mother bearing No. FCM1441630, but her mother passed away on 26.10.2018. After her marriage with Md. Jainal Abedin in the year 2001, as the petitioner shifted her residence to her matrimonial home, the petitioner obtained her Elector Identity Card bearing No. FCM1612993. After her separation from her former husband Jainal Abedin, the petitioner's marriage was solemnized on 02.08.2006 with Jarif Ali of village – Kahibari and thereafter, she started residing in her new matrimonial home and she obtained her own Elector Identity Card bearing No. FCM7536256. The Superintendent of Food and Civil Supplies and Consumer Affairs had issued a ration card bearing No. 2067346.

19. To prove the linkage with her parents and to prove that she is married to Jarif Ali, the Secretary of the Gaon Panchayat has issued a certificate dated 05.07.2015. However, the certificate issued by the Panchayat Secretary was not exhibited, nor was the Secretary examined as a witness.

20. It has been held by this Court in ***Rashminara Begum –Vs- Union of India and Others***, in WP(C) No. 7102/2016 that-

“31. Law on this aspect is very clear. In Narbada Devi Gupta vs Birendra Kumar Jaiswal, (2003) 8 SCC 745, Supreme Court reiterated

the legal position that marking of documents as exhibits and their proof are two different legal concepts. Mere production and marking of a document as exhibit cannot be held to be due proof of its contents. Its execution has to be proved by admissible evidence i.e., by the evidence of those persons who can vouchsafe for the truth of the facts in issue.

32. This proposition was again re-stated by the Supreme Court in L.I.C. vs Ram Pal Singh Bisen, (2010) 4 SCC 491, wherein it has been held that mere admission of a document in evidence does not amount to its proof; in other words, mere marking of exhibit on a document does not dispense with its proof which is required to be done in accordance with law. Under the law of evidence, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Contents of the document cannot be proved by merely filing in a court. Such a document cannot be relied upon.

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36. The 3rd document is dated 24.06.2015 issued by the Secretary, Manikpur Bhelakhamar Gaon Panchayat certifying that petitioner is the daughter of Romjan Ali and Jamila Bibi. She was described as aged about 27 years and that she had married Manirul Islam on 26.06.2002. This document also is of no use to the petitioner. Firstly, because of its belated issuance; as in the previous document, this document was issued on 24.06.2015 when the proceeding against the petitioner was going on. Secondly, and more importantly, this court in Monowara Bewa @ Manora Bewa [WP(C) No.2634/2016] decided on

28.02.2017 has already held that certificate issued by Gaon Panchayat Secretary in so far citizenship status of a person is concerned has got no statutory sanctity. At the most it can be treated as a private document in which event the author of the certificate would have to prove the truthfulness of the contents of the certificate. Secretary of the Gaon Panchayat did not appear before the Tribunal to prove the truthfulness of the contents of the said document.”

21. Reverting back to this case, it is held that the petitioner could not establish her lineage with her parents with the help of the certificate dated 05.07.2015, issued by the Secretary of the Gaon Panchayat as the same was not exhibited nor was the Secretary examined as a witness.

22. It is submitted through the WS and the evidence-in-chief that as the petitioner is an Indian citizen by birth, her name was also reflected in the Voters List of 2017, showing her as the wife of her former husband Jainal Abedin of 66 No. Mangaldai LAC at Serial No. 920 and House No. 167. Now, the petitioner who is married to Jarif Ali of Kahibari cannot rely on such a document, which shows the name of her husband as Jainal Abedin. The petitioner was married to Jarif Ali in the year 2006 and her name is reflected in the Voters List of 2017 as wife of Jainal Abedin. Thus, this is not found to be a reliable and a valid document to establish the lineage of the petitioner with her former husband as well as with her parents and her grand parents. She has also stated that her uncle Moqbul Ali has obtained the Voter Identity Card bearing No. FCM1271110.

23. The petitioner has also stated that Elector Identity Cards have been issued in favour of her brothers Md. Kabas Ali, Md. Siddique Ali and Md. Hased Ali and the numbers shown in the

Cards are FCM1441641, FCM1441674 and FCM1441696 respectively. Moreover, the Elector I.D. cards were not exhibited by the petitioner.

24. It is reflected through the evidence-in-chief of the petitioner that she is a resident of Bakpari village, Police Station – Mangaldai, District – Darrang. She has stated that her father's name is Abdul Hussain and her mother's name is Kamala Bewa. She has also submitted an affidavit affirming that "Abdul Hussain" and "Abul Miya" is the same person. Her father's correct name is Abul Miya but his name has been wrongly inserted as Abdul Hussain in place of Abul Miya in the Elector Identity Cards in FCM1441641, FCM1441674 and FCM1441696 respectively. But this affidavit was not exhibited in the Court. It is also pertinent to mention at this juncture that although the Voters' List of 1966 reflects the names of the petitioner's father and his brothers and sisters, yet the petitioner refrained from mentioning their names in the WS and her evidence-in-affidavit for the reasons best known to her. Likewise, several dissimilarities and discrepancies have emerged in the name of the petitioner's father. Exhibit-2 is the Electoral Photo I.D. Card of the petitioner's mother bearing No. FCM1441630 and her mother's name appears as Kamala Bibi, Wife of Abdul Hussain whereas the Exhibit – 4 reflects the petitioner's name as Lal Bhanu, Daughter of Abul Hussain and not Abdul Hussain. Exhibit 4 is the marriage certificate of the petitioner. The petitioner's father's name is reflected as Abul Miya in the Voters List of 1966 and his age is shown as 28 (Twenty Eight) years whereas her mother's name is reflected as Kumala Bibi, Wife of Abul and not Abul Miya and her age is reflected as 23 (Twenty Three) years. The Voters List of 1966 is of No. 71 Rangamati (SC) LAC at village No. 5 Nangoli, Mouza – Rangamati, Police Station – Mangaldai, District – Darrang (Assam).

25. It is contended by the learned Standing Counsel for the Home Department that the age of the petitioner's mother is reflected as 58 (Fifty Eight) years in the Elector Photo ID Card (Ext. 2) dated 01.10.2013, which indicates that her date of birth was 1955 which clearly reflects that the petitioner's mother was 12 (Twelve) years in the year 1966. On comparison of Exhibit – 1 and Exhibit – 2, it is thus apparent that the petitioner's mother's age ought to have been 12 (Twelve) years instead of 23 (Twenty Three) years as reflected in the Voters' List Exhibit – 1. Through her cross-examination, the petitioner as DW.1 admitted on oath and produced Exhibit – 2 Elector Photo ID of her mother which reflected her mother's name as Kumala Bibi aged 58 (Fifty Eight) years and her father's name as Abdul Hussain. Reflecting this cross-examination the learned Tribunal has rightly held that discrepancy thus arose in the age of Kumala Bibi whose age is shown as 23 (Twenty Three) years in the Voters List of 1966 marked as Exhibit – 1.

26. The petitioner on one hand has projected her father's name as Abdul Hussain and on the other hand, she has also projected her father as Abul Miya. Again, the petitioner has projected her mother's name as Kamala Bewa as well as Kumala Bibi. Later, an affidavit was filed by the petitioner but this affidavit was not exhibited and proved before the Tribunal. Through the affidavit, the petitioner tried to ascribe reasons relating to the discrepancies in her father's name in the Electoral ID Cards as Abdul Hussain instead of Abul Miya. This affidavit was not proved by the petitioner to the satisfaction of the Tribunal. No affidavit was submitted by the petitioner nor any reasons were ascribed by the petitioner to prove that Kamala Bewa and Kumala Bibi is one and the same person. The decision of this Court in ***Rashminara Begum's case (supra)***, is also relevant in this aspect.

27. It has been appropriately held by the Tribunal that the petitioner has failed to establish any lineage with her parents and her grandparents with the aid of the Voters List of 1966. It would be pertinent to reiterate that the names of the siblings of Abul Miya, Son of Foyez has been reflected in the Voters List of 1966 but the petitioner refrained from mentioning her uncles' and aunts' names in her WS, evidence-in-affidavit or through her cross examination. It would also be apt to reiterate that the petitioner's mother's name is shown as Kumala Bibi wife of Abul and not Kamala Beowa wife of Abdul Hussain. No documentary evidence linking Exhibit – 1 has been adduced by the petitioner. The Elector I.D. Card cannot be accepted as evidence. It would be apt to reiterate that the petitioner has failed to establish any linkage with the Voters List of 1966.

28. Thus, in the wake of the foregoing discussions, it is held that the petitioner has failed to establish the lineage of her parents Kamala Beowa, Wife of Abdul Hussain with her grandfather Foyez.

29. Moreover, the petitioner has failed to mention the names of her uncles in her WS, as well as in her evidence-in-affidavit. Their names have already been mentioned in the Voters' List of 1966 but the petitioner refrained from mentioning their names in her pleadings and evidence.

30. The petitioner has failed to discharge her onus as per Section 9 of the Act of 1946 with cogent, reliable and admissible evidence.

31. It has been observed in the foregoing discussions that the discrepancies surfacing in the evidence are incomprehensible. Petition is hereby dismissed as the petition is bereft of

merits.

32. Interim order passed earlier on 17.10.2023, in this writ petition is hereby vacated/recalled.

33. Registry is directed to send back the original record of FT Case No. 3057/2011, corresponding to Reference Case No. 134/2010, to the learned Foreigners' Tribunal No. 1st at Mangaldai, Darrang, along with a copy of this order forthwith and shall also inform the concerned Superintendent of Police (Border), Darrang, Mangaldai, and the Deputy Commissioner, Darrang, Mangaldai, about this order for their needful.

JUDGE

JUDGE

Comparing Assistant