

GAHC010199212018



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

Case No. : WP(C)/6239/2018

NARAYAN DEB
S/O- LT KHITISH DEB, R/O- VILL- OUBARI, P.S. THELAMARA,, DIST-
SONITPUR, ASSAM, PIN- 784001

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH THE MINISTRY OF HOME AFFAIRS, GRIHA MANTRALAYA,
NEW DELHI- 110011

2:THE STATE OF ASSAM
THROUGH THE SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN ASOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GHY-5

5:THE DY. COMMISSIONER
SONITPUR
P.O. TEZPUR
DIST- SONITPUR
ASSAM

PIN- 784001

6:THE SUPERINTENDENT OF POLICE (B)
SONITPUR
P.O. TEZPUR
DIST- SONITPUR
ASSAM
PIN- 78400

Advocate for the Petitioner : MD. I HUSSAIN, MR. L R MAZUMDER

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

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

ORDER

Date : 05-08-2024

(K.R. Surana, J)

Heard Mr. I. Hussain, learned counsel for the petitioner as well as Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned counsel for the respondent no.3; Mr. J. Payeng, learned standing counsel for the Home Department representing respondent nos.2 and 6 and Mr. H.K. Hazarika, learned Govt. Advocate appearing for the respondent no.5. The respondent nos.1 and 4 are unrepresented.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 30.07.2018 passed by the learned Foreigners Tribunal, Sonitpur No.8, Sonitpur in FT (8) case no.1340/2017 corresponding to TZP (B) Memo no.5672/2004 declaring the petitioner to be a foreigner who has entered Assam on or after 25.03.1971 and further opining that he is liable to be deported to his original territory and till then to be kept in detention centre as an internee within the provisions of law.

3. The learned counsel for the petitioner has referred to the written statement filed by the petitioner before the Foreigner's Tribunal and it is stated that the petitioner had examined himself as DW-1, his projected sister Subhagya Bhatta was examined as DW-2 and had one Subha Das, the Head teacher of Surendra Das Prathamik Vidyalaya was examined as DW-3, and 9 (nine) documents were exhibited.

4. It may be mentioned that in the deposition of the petitioner as DW-1, he has referred to Migration Certificate as Ext.Ka, Citizenship Registration Certificate (Ext.Kha), Copy of Jamabandi (Ext. Ga), Voter's Identity Card (Ext. Gha) and Certificate issued by the Gaon Burha (Ext. Unga). The DW-2 had exhibited School Certificate as Ext. Cha and another School Certificate as Ext. Chaa. Accordingly, it is submitted that the evidence has not been considered by the learned Tribunal in its proper perspective and arrived at an incorrect conclusion by holding that the petitioner had failed to discharge his burden under section 9 of the Foreigner's Act, 1946 to prove that he is not foreigner but a citizen of India.

5. Per contra, the learned standing counsel for the Home Department has made his submissions in support of the impugned opinion and has submitted that the petitioner has failed to prove his link to his parents who had allegedly migrated from specified territory i.e. then East Pakistan (now Bangladesh) to India.

6. On an examination of the materials available on record, it is observed

that the learned Tribunal had rejected the copy of jamabandi (Ext. 3 and 8), which are of the year 2004 and 2014 on the ground that they do not assist the petitioner to prove his linkage with his Indian parents. Although the petitioner had relied on the *Gaonbura's* certificate (Ext.5), the same was discarded on the ground that the concerned *Gaonbura*, who was the author of the said document had not come to depose in favour of the petitioner.

7. The learned Tribunal had discarded the School Certificate (Ext.7) of DW-2, who is the projected elder sister of the petitioner on the ground that the author of the said document had not come before the Tribunal to prove the contents of the said document and accordingly Ext. 5 and 7 were held to be inadmissible in evidence. The learned Tribunal had discarded the voter Id card (Ext.4) of the petitioner issued on 01.10.2013 as well as the voter Id card of DW-2 (Ext.9), on the ground that the enlistment of their names in the electoral rolls do not prove the citizenship of the petitioner and does not link him with the Indian parents.

8. It may be mentioned and clarified herein that although in the evidence recorded in the DW-1, 2 and 3 they had referred to the exhibits as Ext. Ka to Chaa, but the said documents are referred to in the written statement as Ext. 1 to 9 and accordingly, in the opinion the learned Foreigner's Tribunal has also referred to the said exhibited documents as Ext. 1 to 9.

9. In respect of Ext. Cha, which is recorded as Ext. 6, it is seen from the cross-examination of the DW-3 that she had denied that the said certificate contained her signature and had stated that the signature is in the name of

Shobha Rani Das and accordingly, while denying the signature she has stated that she does not know who has issued the certificate in her name. She had further stated that she is working in the said school since 2011 and the said certificate is of the year 1990 whereas the said school was not even established at that time. In order to counter the said statement in the cross-examination of DW-3, the learned counsel for the petitioner has referred to the certificate annexed as Annexure-3 to the writ petition to project that the author of the said certificate was one Shobha Rani Das whereas the petitioner had examined Shobha Das and it is sought to be projected that there are two persons were working in the said school with similar names.

10. In this regard, the Court is of the considered opinion that as the said certificate has not been introduced by the petitioner in evidence before learned Tribunal, the writ Court would be slow to take cognizance of the document which is produced for the first time in this writ petition for the purpose of examining the correctness of the opinion impugned in this writ petition.

11. In the present case in hand, it is the petitioner who had called the DW-3 to prove Ext. Cha (Ext.6) and despite her adverse statement in the cross-examination, the petitioner had not re-examined DW-3. Therefore, from the materials available on record, the Court finds that notwithstanding that the petitioner has placed the documents of the projected father of the petitioner to show that he migrated into the Country, for which he places reliance on the copy of the Migration Certificate dated 29.05.1956, which also bears a date of 28.06.1956 in respect of Migration Certificate no. 83/27/5/7272 dated 14.05.1956, as well as copy of Registration certificate bearing no.80103 issued

by the Registering authority at Tezpur in the name of the Khitish Ch. Deb to project that the person whose name has entered, was his father, but as the only document to connect the petitioner to his projected father is the School Certificate (Ext. Cha/ Ext.6), which could not be proved in accordance with law, the Court is of the considered opinion that the impugned opinion dated 30.07.2018 does not suffer from any perversity in whatsoever, and does not warrant any interference by this writ court.

12. At this stage, the learned counsel for the petitioner has referred to the amendment made to the Citizenship Act, 1995 by way of Citizenship Act, 2019 as well as the amendment to the Citizenship Rules, 2009 by way of Citizenship (Amendment) Rules, 2024, and it is submitted that the petitioner, being a Hindu, is entitled to make an application for grant of citizenship by registration or naturalization and in this regard it is submitted that one of the documents on which the petitioner intends to rely for the purpose of his citizenship by registration or naturalization is the Migration Certificate and the Certificate or Registration referred above. It is submitted that in the impugned opinion the said two documents being Ext. 1 and 2 were discarded as the Tribunal had doubted its genuineness and it is submitted that the application of the petitioner for citizenship is being processed, the authorities may not be prejudiced with the opinion impugned in this writ petition.

13. The said submission has been considered in light of the amendment carried out under the Citizenship Act and Citizenship Rules. Notwithstanding that the Court is disinclined to interfere with the impugned opinion dated 30.07.2018 passed by the learned Foreigner's Tribunal no.8, Tezpur in FT (8) case

no.1340/2017 arising out of Ref. TZP (B) Memo no.5672/2004, we are inclined to accept the oral prayer made by the learned counsel for the petitioner in respect of the Migration Certificate and Certificate of Registration which was exhibited as Ext. Ka and Kha (Ext. 1 and 2) as the learned Foreigner's Tribunal had merely doubted its genuineness but did not declare the said document to be fraudulent or forged .

14. Accordingly, it is provided that in the event the petitioner applies for citizenship by way of registration or naturalization, it would be open for the concerned authorities to examine the religion of the petitioner as well as the genuineness of the said certificates i.e. Certificate of Migration and Certificate of Registration, without being influenced by the impugned opinion dated 30.07.2018, passed by the passed by the learned Foreigners Tribunal, Sonitpur No.8, Sonitpur in FT (8) case no.1340/2017 corresponding to TZP (B) Memo no.5672/2004.

15. Save and accept the observation as made herein before on right of the petitioner to apply for citizenship by way of registration or naturalization, this writ petition stands dismissed.

JUDGE.

JUDGE.