

GAHC010275982018



2024:GAU-AS:8100

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

WP(C) No. 8578/2018

1. Musstt. Nili Bibi @ Nilima Khatun
W/O Late Samed Ali,
D/O. Insan Ali @ Md. Insan Ali Sk.,
Resident of Village-Angarkata Part-II,
P.S. Bagribari, District-Kokrajhar,
Assam, Pin - 783349.

.....Petitioner

-Versus-

1. The Union of India
Represented by the Secretary to the Ministry of
Home Affairs,
Government of India, Sastri Bhawan, New Delhi,
Pin - 110001.
2. The State of Assam
Represented by the Commissioner and Secretary to
the Government of Assam Department. of Home
Dispur Guwahati-6.
3. The Superintendent of Police (B).

Kokrajhar P.O. and District-Kokrajhar
Assam, Pin - 783370.

4. The Deputy Commissioner, Kokrajhar
P.O, P.S. and District-Kokrajhar
Assam Pin - 783370.
5. The State Coordinator Assam
The National Registrar of Citizens
Bhangagarh, Guwahati- 05,
Kamrup(M), Assam.
6. The Election Commission of India
Represent by the Chief Election Commission of
India Nirvachan Sadan, Ashoka Road
New Delhi, India Pin - 110001.
7. The Member, Foreigners Tribunal, Kokrajhar
P.O, P.S. and District-Kokrajhar
Pin- 783370

.....Respondents

For Petitioner : Mr. M. Hussain, Advocate
For Respondent(s) : Ms. A. Verma, SC, Home Department
Mr. P. Sharma, Sr, Govt. Advocate
Mr. A. I. Ali, SC, ECI

Date of Judgment : 19.08.2024

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

(MRIDUL KUMAR KALITA, J)

- 1.** Heard Mr. M. Hussain, learned counsel for the petitioner. Also heard Ms. A. Verma, learned Standing Counsel, Home Department, Assam for respondent Nos. 2 and 3; Mr. P. Sharma, learned Senior Government Advocate, Assam for respondent No.4 as well as Mr. A. I. Ali, learned Standing Counsel, Election Commission of India for respondent No.6.
- 2.** This writ petition has been filed by the petitioner, namely, Musstt. Nili Bibi @ Nilima Khatun, impugning the judgment and opinion dated 13.06.2018, passed by learned Foreigners Tribunal, Kokrajhar, in Case No. K/FT/D/1393/12 (FTC No. 357/BBR/11), whereby the petitioner has been declared as a foreigner under the Foreigners Act, 1946, who had illegally entered into India (Assam) on or after 25.03.1971.
- 3.** The facts relevant for consideration of this writ petition, in brief, are as follows:
 - i.** A communication was made by the Electoral Registration Officer, 26/Bilasipara West Legislative Assembly Constituency to the Superintendent of Police (Border), Kokrajhar, expressing doubt about the nationality of the above-named petitioner and through the said communication, it was requested that the matter (Reference D-voter Case No.1580/D/07) may be referred to the Foreigners Tribunal, Dhubri for determining the

nationality of the petitioner.

- ii.** Accordingly, on 01.06.2011, the Superintendent of Police (Border), Dhubri made a reference to the Foreigners Tribunal-2, Dhubri for deciding the nationality status of the petitioner, namely, Musst. Nili Bibi, under the Foreigners Act, 1946 and the Rules made there under.
- iii.** On receipt of the aforesaid reference from the SP (B), Kokrajhar, the Foreigners Tribunal Kokrajhar registered the Case No. K/FT/D/1393/12 against the petitioner and issued notice to her, fixing 16.11.2017 for her appearance and for filing the written statement.
- iv.** On receipt of the notice of the case, the petitioner filed her written statement along with her evidence on affidavit before the learned Tribunal on 24.01.2018, wherein she claimed herself to be a citizen of India by birth.
- v.** The petitioner also adduced evidence of her projected father, namely, Insan Ali, as PW-2, as well as her projected mother, namely, Bacchani Bibi, as PW-3.
- vi.** In her written statement submitted before the Tribunal, the petitioner has stated that she was brought up at village Uttar Falimari under Tiamari Police Station in the district of Dhubri. The petitioner has also stated that she

got married with one Samad Ali, son of Somer Ali, of village Angarkata, Part-2, under Bogoribari Police Station in Kokrajhar District and her name was recorded in the voter list of 2016 at Serial No. 93, House No. 20, under 26 No. Bilasipara West, (GEN), LAC, as Nili Bibi. She has also stated in her written statement that her father's name is Insan Ali, who is a citizen of India and he has been issued an electoral photo identity card bearing No. DHL2140661 under 23 No. Dhubri LAC.

- vii.** She has also stated that the name of her father, Insan Ali, has been enlisted in the voter list of 1997 at Serial No. 1112, House No. 380, under 23 No. Dhubri LAC stating further that the name of her father was also reflected in the voter list of 2010 of 23 No. Dhubri LAC, at Serial No.617, against house No. 380 and that her grandfather Noor Baksh's name was also reflected in the voter list of 1966 of 33 No. Dhubri LAC, under Serial No. 98, against House No. 27.
- viii.** She has also stated that the name of the grandfather of the petitioner has also been reflected in the Registered Deed No. 7547, dated 16.11.1962, in respect of a plot of land, which was duly registered before the Office of the Sub-registrar, Dhubri.

- ix.** Petitioner in her written statement also stated that in some of the documents, her name has been shown as Nilima Khatun and in some other documents, it is shown as Nilima Bibi and she has stated that all the names i.e., Nilima Bibi, Nili Bibi and Nilima Khatun are her name only.
- x.** In her evidence on affidavit filed before the Tribunal, the petitioner reiterated the facts that she has stated in her written statement. She exhibited her birth certificate as Exhibit No.1, also exhibited the elector photo identity card of her projected father, namely, Insan Ali, as Exhibit-2; exhibited the certified copy of voter list of 1997 as well as 2010 of 23 No. Dhubri, LAC, containing the name of her projected father Insan Ali. She has also deposed that her grandfather Noor Baksh is a citizen of India and his name has been recorded in the voter list of 1966.
- xi.** She exhibited the voter list of 1966 as Exhibit-5. She has also exhibited the Registered Deed No.7547 dated 16.11.1962 as Exhibit-6.
- xii.** During cross-examination, the petitioner Nili Bibi, has deposed that she was born on 15.01.1987. She has also stated that she has three brothers, namely, Izam-ul-Haque, Ikram-ul-Haque and Inam-ul-Haque and two sisters, namely, Elima Bibi and Roshni Begum.

- xiii.** She has also stated that her grandparents had died before her birth. She has answered in negative to some suggestive questions put by the Government Pleader to her.
- xiv.** In their evidence on affidavit, PW-2, namely, Insan Ali and PW-3, namely, Bacchani Bibi, have stated that the petitioner is their daughter and was born in their residence at village Falimari Part-2 under Tiamari Post Office under Gauripur Police Station in the District of Dhubri. PW-2 has deposed in his evidence on affidavit, that he had collected the birth certificate of the petitioner on 11.09.1992. Both of them have stated that they are citizens of India and their names are enlisted in the voter list and the PW-2 has also one voter ID card, which he has submitted before the Tribunal.
- xv.** However, by the impugned judgment and opinion dated 13.06.2018, learned Foreigners Tribunal, Kokrajhar dismissed the claim of the petitioner and opined her to be a foreigner, who entered into India from the specified territory (present Bangladesh) on or after 25.03.1971.
- 4.** Learned counsel for the petitioner has submitted that the learned Tribunal has wrongly discarded the birth certificate of

the petitioner, which was exhibited as Exhibit-1 merely on the ground that there was a discrepancy in the date of registration of the said certificate. It is submitted by learned counsel for the petitioner that the discrepancy was due to the mistake done by the officials who granted the birth certificate and the petitioner cannot be made to suffer for the said discrepancy.

5. Learned counsel for the petitioner has also submitted that the learned Tribunal also wrongfully discarded the testimony of the parents of the petitioner, where they have categorically stated that the petitioner is their daughter.
6. Learned counsel for the petitioner has also submitted that the petitioner has produced a copy of linkage certificate issued by the GP Secretary of Geramari Gaon Panchayat on 09.07.2015, which shows that the petitioner is the daughter of Noor Baksa, whose name was included in the Voter List of 1966 as well as 1970.
7. Learned counsel for the petitioner has submitted that the petitioner may be afforded with an opportunity of adducing the corrected date of birth certificate before the Tribunal and for the said purpose prays for remanding the matter back to the Tribunal for a fresh adjudication.
8. On the other hand, Mr. P. Payeng, learned Standing Counsel,

Home Department, Government of Assam, has submitted that the Tribunal has correctly opined the petitioner to be a foreigner, as the petitioner failed to prove establish her citizenship during the inquiry before the Foreigner's Tribunal.

- 9.** He has also submitted that as the petitioner has failed to establish her citizenship before the Tribunal, the Tribunal has correctly assessed the evidence and came to the right conclusion that the petitioner is a foreigner and it does not warrant any interference by this Court in exercise of its writ jurisdiction.
- 10.** Learned Standing Counsel, Home Department, Government of Assam, has also submitted that the Tribunal has correctly discarded the birth certificate of the petitioner, as it is apparent that there are inherent contradictions in the said birth certificate, which shows the date of registration as 30.02.1987, which is apparently wrong as in the month of February, 30 days cannot be there under any circumstances.
- 11.** It is also submitted by the learned Standing Counsel, Home Department that though, the date of registration has been mentioned as 30.02.1987, however, it was issued on 11.09.1992 and no explanation has been given by any of the witnesses of the petitioner regarding this gap or delay in issuance of the birth certificate.

- 12.** Further, the learned Standing Counsel for the Home Department has also submitted that the birth certificate was not proved by adducing the evidence of the person, who issued the birth certificate or any of the employee of the Dharamshala PHC from where the birth certificate was stated to have been issued. Hence, it is submitted that the petitioner has failed to prove the birth certificate.
- 13.** It is also submitted by the learned Standing Counsel for the Home Department that though, the learned counsel for the petitioner has mentioned about the voter list of 1971 as well as certificate issued by the Secretary of Geramari Gaon Panchayat, however, these certificates and as well as voter lists were never exhibited before the Tribunal during the inquiry and by only producing the photocopy of such documents in this writ proceeding would not justify interference with the opinion rendered by the Tribunal by this Court in exercise of its writ jurisdiction.
- 14.** Learned Standing Counsel for the Home Department has therefore, prayed for dismissing the instant writ petition.
- 15.** We have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the case record of Case No.

K/FT/D/1393/12, which was requisitioned in connection with this case.

- 16.** In the case of ***Central Council for Research in Ayurvedic Sciences Vs. Bikartan Das*** reported in ***2023 SCC OnLine SC 996***, the Hon'ble Supreme Court of India has observed as follows:

“50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

- 17.** Thus, while exercising writ jurisdiction for issuance of a writ of certiorari, this Court is not supposed to re-weigh or review the evidence upon which the finding of the Tribunal is based. It can exercise writ jurisdiction only if the finding of the Tribunal is

palpably erroneous or there is an error of law, which is apparent on the face of record.

- 18.** However, for our own satisfaction we have gone through the pleadings as well as the evidence adduced by the petitioner in support of her contention that she is a citizen of India.
- 19.** The petitioner has claimed Indian citizenship by birth and has projected one Noor Baksa as her father. However, the only document where the name of her father appears along with her name is the birth certificate, which is exhibited as Exhibit-A.
- 20.** On perusal of the record, it appears that the said birth certificate was exhibited by PW-1, i.e., the petitioner herself and has been marked as Exhibit-A. However, the birth certificate is shown to have been issued by the Registrar of Birth and Death of Dharmashala, PHC. However, the issuing authority of the said birth certificate or for that matter anyone from the Office of the Dharmashala, PHC along with the relevant registers or contemporaneous record has not adduced evidence to prove the same.
- 21.** Moreover, as the birth certificate has been exhibited mainly to show that the petitioner is the daughter of Md. Insan Ali, whose name has been shown in the said birth certificate as the father of the petitioner, it was incumbent on the petitioner to

prove the contents of the birth certificate by adducing evidence of the person who issued the said birth certificate or anybody who could have deposed from the records maintained in the said PHC, i.e., Dharmashala, PHC and prove the contents of the said birth certificate.

- 22.** It is also pertinent to mention here in that the birth certificate which is exhibited as Exhibit-A has been issued in the name of one Nilima Khatun whereas the name of the present petitioner is Nili Bibi and apart from her own statement even if we ignore the discrepancy of the name of the petitioner, the fact remains that the Exhibit-A, which the petitioner is claiming to be the link document showing her relationship of the petitioner with her father Insan Ali has not been duly proved, therefore, we are of the considered view that the same was correctly not relied upon by the learned Tribunal.
- 23.** Moreover, there are inherent inconsistency in the said exhibit in as much as the date of registration of the birth certificate has been shown as 30.02.1987, which is an impossibility as under no circumstances the month of February contains more than 29 days.
- 24.** Moreover, it also appears that the said certificate was issued on 11.09.1992 however, neither there is any pleading nor proof to the effect to show as to why the birth certificate was issued

after more than five and half years of the date of registration and under what circumstances it was issued, no pleading or proof is there on record in that regard.

25. Hence, we are of the considered opinion that the learned Tribunal was correct in discarding the Exhibit-A and not relying on the same. After discarding the Exhibit-A, no documentary evidence remains on record to show that the petitioner is the daughter of Noor Baksa, who has been projected as her father.
26. Moreover, though, in this writ proceeding, the petitioner has annexed a photocopy of a linkage certificate dated 09.07.2015 issued by the Secretary of Geramari Gaon Panchayat, however, no such certificate was ever produced or exhibited before the Tribunal during the pendency of the reference proceeding before it. Further, the petitioner did not show any reason for not exhibiting the said certificate.
27. Thus, after discarding the Exhibit-1, i.e., the birth certificate produced by the petitioner, what remains on record is the oral testimony of the petitioner as PW-1 and that of her projected parents, i.e., PW-2 and PW-3, who claimed the petitioner to be her daughter. However, this Court has held in the case of "***Bijoy Das v. Union of India and Others***" reported in **2018 3 GLT 118** that mere filing of written statement and oral testimony in a proceeding under the Foreigners Act, 1946 would not be

enough. The fact in issue would have to be proved by the proceedee by adducing documentary evidence which are admissible and relevant.

28. Same view has been taken by this Court in the case of **Noor Begum v. Union of India** [WP(C) No. 1900/2019] and in the case of **Asha Begum v. Union of India** under [WP(C) No. 4020/2017].
29. Hence, under the facts and circumstances of this case, we see no illegality or irregularity in the Tribunal not relying upon the oral testimony of the witnesses in the proceeding adduced by the petitioner and coming to the finding that the petitioner has failed to establish the linkage with her projected father.
30. Having failed to establish her linkage with the projected father, Insan Ali, the other documents produced by the petitioner becomes irrelevant for establishing that she is an Indian citizen. Thus, we find no infirmity in the finding and the impugned opinion dated 13.06.2018 rendered by the learned Tribunal.
31. As already discussed hereinbefore, it is settled that in a writ proceeding where the prayer is for issuance of a writ of certiorari, the Court only exercises its supervisory jurisdiction and not appellate jurisdiction and does not review the evidence upon which the finding of the Tribunal was based. The petitioner has thus, failed to demonstrate that in this case any

grounds exist where this Court should have exercised its writ jurisdiction. The petitioner has not been able to make out any case demonstrating any error apparent on the face of the record to justify any interference with the impugned opinion.

- 32.** We thus, find no merit in the present writ petition. Accordingly, this writ petition stands dismissed and the opinion/judgment of the Tribunal is affirmed.
- 33.** In view of above, the interim protection granted to the above-named petitioner by order dated 09.01.2019 is hereby vacated and recalled.
- 34.** Send back the record of FT Case No. K/FT/D/1393/12 to the learned Foreigners Tribunal, Kokrajhar along with a copy of this judgment. Also forward a copy of this Judgment and Order to the Superintendent of Police (Border), Kokrajhar for its information.

JUDGE

JUDGE

Comparing Assistant