

GAHC010317132019



2024:GAU-AS:8966

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

Case No. : WP(C)/368/2020

SONABHAN BIBI @ SONABHAN NESSA
D/O- SAGOR ALI SHEIKH, W/O- KOBAD ALI, R/O- VILL- SONTOSHPUR, P.S.
CHAPAR, DIST.- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA,, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG,
NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT.. OF HOME
DISPUR
GHY-6

3:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECY.
NIRBACHAN BHAWAN
NEW DELHI-1

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GHY-5

5:THE DY. COMMISSIONER OF GOALPARA
P.O.
P.S. AND DIST.- GOALPARA
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
DIST.- GOALPARA
ASSA

Advocate for the Petitioner : MR. R ALI, MR M SHELMIM,MR M Z SHAH

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

JUDGMENT AND ORDER

05.09.2024:

(K.R. Surana, J)

Heard Mr. M. Shelim, learned counsel for the petitioner. Also heard Mr. M. Adhikari, learned CGC, Mr. A.I. Ali, learned Standing Counsel for the Election Commission of India and Ms. A. Verma, learned Standing Counsel for Foreigners' Tribunal matters.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely Sonabhan Bibi @ Sonabhan Nessa, has assailed the opinion dated 15.10.2019, passed by the learned Member Foreigners Tribunal No. 8th, Goalpara in F.T. Case No. 754/2017 [corresponding to IM(D)T Case No. 407/2000], by which she was declared to be foreigner of post 25.03.1971 stream.

3. In order to discharge her burden to prove that the petitioner is not a foreigner, as required under section 9 of the Foreigners Act, 1946, in her written statement the petitioner has projected late Sagor Ali Sheikh, son of late

Moyjuddin as her father and late Mojiron Bibi as her mother, whose name appear in the National Register of Citizen (NRC for short) details, 1951 of village 189 Kashiartari, under Lakhipur Police Station District Goalpara. She has also projected Omar Kaji as her elder brother, who along with his parents was enrolled in the voter list of 1970 of the 44 Goalpara West L.A.C. She claims to have been born and brought up at village Chitolmari, under Lakhipur P.S. in the district of Goalpara. She has projected that she was married to Kobed Ali, as per Muslim rites and rituals and after marriage her name was enlisted for the first time as voter in the voter list of 1989 along with her husband under 56 Singulipara Part-1 village under No. 38 Goalpara West L.A.C. She has also stated that her name along with her husband and other family members appeared in the voter list of 1997 of village 56 Singulipara Part-1, but her age was wrongly recorded as 25 instead of 27. The petitioner shifted along with her husband to village 405 Sontoshpur in the district of Dhubri. Her name appeared in the voter list of 2005 under the same village and thereafter her name along with other family members was enlisted in the voter list of 2011, 2014, 2015, 2016 and 2017 but her age was erroneously recorded as 37, 38, 39, and 40 instead of 41, 44, 45, 46, and 48 and she was also issued a Elector Photo Identity Card in the year 2013. Petitioner further projects that her actual and correct name is Sonabhanu Bibi but in the voter list, her name is erroneously recorded as Sonabhanu, Sonabhan Bibi, Sonabhan Nessa. In the written statement it was stated that could produce more documents before the learned tribunal in support of her citizenship at the time of giving evidence. In her written statement, the petitioner had enclosed the photocopies of the NRC details of 1951, photocopy of certified copy of voter list of 1966, 1970, 1977, 1989, 1997, 2005, 2011, 2014, 2015, 2016 and 2017 and Elector Photo Identity Card as

Annexure I to XIII respectively.

4. By filing her evidence-on-affidavit as PW-1 the petitioner has reiterated her stand in the written statement. She has exhibited the certified copy of voter list of 1966, 1970, 1977, 1997, 2005 and the Elector Photo Identity Card as Exhibit Nos. A to F respectively. However, the photocopy of voter list of 1990, 2011, 2014, 2015, 2016 and 2017 were referred to as Annexure I to VII respectively and were not marked as exhibits. The records (TCR for short) received from the Tribunal reveals that the PAN Card of the petitioner is marked as Ext.G, but there is no corresponding pleading either in the written statement or in the evidence-on-affidavit filed by the petitioner.

5. In her cross-examination recorded on 07.06.2017, the petitioner had stated that she was married, 30 years back and that time she was 15/16 years old and after marriage she went to her husband and she has 7 children. She has stated that her father had expired about 13/15 years back at village Chitolmari, her mother name is Mojiron Khatun and she had expired at village Nayer Alga about 2 years back. She does not know the age of father and mother at the time of their death. Her parents had 10 children including her and she does not know the age of her brothers and sisters. She had stated that her brother Omar Kaji is residing at village Nayer Alga and she does not know how many years older he was.

6. The petitioner had examined Omar Kaji, her projected brother as DW-2. In his evidence-on-affidavit, he had stated that the petitioner is his younger sister and he had reiterated the statements made by the petitioner in her evidence-on-affidavit and in the process the DW-2 has also copied the statement of PW-1 that his actual and correct name is Sonabhanu Bibi but in the

voter list, her name is erroneously recorded as Sonabhanu, Sonabhan Bibi, Sonabhan Nessa instead of Sonabhanu Bibi. In his cross-examination, though the DW-2 has stated that the petitioner has 7 children, but he could state the names of only 3 children.

7. One Khagen Kairiy was examined as DW-3, who was the then Gaon Panchayat Secretary. He had exhibited a link certificate as Exhibit- H that was issued by the then Secretary of Rowkhwa Gaon Panchayat, namely, Saidur Rahman in favour of the petitioner Sonabhan Bibi, daughter of Sagor Ali of village Kashiartari under Chunari Police Station been given marriage to Kobad Ali. He is also exhibited the signature of Sidur Rahman as Exhibit- H(i), counter signature of Deben Nath, BDO, Lakhipur Development Block as Exhibit-H(ii) and counter foil of Exhibit- H as Exhibit- H(iii). In his cross-examination DW-3 has stated that the certificate was issued for NRC purpose and he does not know the petitioner personally and that the certificate was not issued after getting oral or written evidence.

8. One Adar Hussain serving as Lat Mandal under Bilasipara Revenue Circle was examined as DW-4. He had brought the *draft chitha* of 1994-1995 and the main *jamabandi* of 1980. He had exhibited the *kacha patta* of Nayer Alga Part-III in the name of Sagor Ali, son of Moyjuddin Sheikh and Abdul Hamid son of Syed Ali as Exhibit-I, and signature of the Assistant Settlement Officer as Exhibit-I(i) and signature of Ruhul Amin, A.S.K as Exhibit-I(ii) and signature of the Lat Mandal as Exhibit-1(iii). In his cross-examination DW-4 has stated that he was not present in the time of mutation and he was not the signatory of Exhibit-I.

9. One Kamla Kanta Ray, who was serving as Office Assistant of

Office of Settlement Officer, Dhubri, was examined as DW-5. He had exhibited the photocopy of final *khatian* (proved in original) as Exhibit-I(iv), and stated that Exhibit-I was similar to their record. In his cross-examination, he had stated that he was not present in the time of mutation.

10. The learned counsel for the petitioner has submitted that the name of the father of the petitioner is Sagor Ali Sheikh but in some exhibited documents, his name was written as Sagor Ali. Hence, it has been submitted Sagor Ali Mondal, Sagor Ali Sheikh and Sagor Ali was one and same person. It has also been submitted that the learned Tribunal had disbelieved the evidence of the petitioner because the petitioner had not produced the family tree of the legacy data code of Sagor Ali Mondal, son of Late Mayesuddin Mondal, having NRC 1951 Legacy Data Code 200-0009-5975. The land document exhibited as Ext.I was also disbelieved merely because it contained two names, one Sagor Ali and the other Abdul Hamid. Moreover, it has submitted that the learned Tribunal had disbelieved the evidence of the petitioner and 4 (four) other witnesses on flimsy grounds. Accordingly, it is prayed that the opinion rendered by the learned Foreigners' Tribunal be interfered with.

11. On a perusal of the TCR, it is seen that though the petitioner had filed a copy of NRC Details of 1951 as Annexure-I to her written statement, but it was not exhibited.

12. It is also seen that Adar Hussain, working as the Lat Mandal, was examined as DW-4. He had exhibited the *kucha patta* of land in the name of Sagor Ali, but there was no pleading in the written statement of the petitioner about it. Moreover, the petitioner (DW-1) and Omar Kaji (DW-2) had not led about it in their evidence-on-affidavit.

13. From the LCR, it is seen that as the name of the projected father of the petitioner was Sagor Ali, but in the reference, her father's name is written as Jahur Ali, the learned Tribunal had called for a report from the Officer-in-Charge, Chunari P.S, as to whether the name of the petitioner's father is Jahur Ali or Sagor Ali. The Officer-in-Charge, Chunari P.S. had submitted a report that the petitioner was married to Kobat Ali about 14-15 years ago and is now residing at Village Sontoshpur, P.S. Chapar, Dist. Dhubri, it could not be confirmed whether her father's name is Johor Ali or not. Nonetheless, a copy of voter list and voter ID in respect of the petitioner was produced and moreover, a prayer was made for directing the Officer-in-Charge of Chapar P.S. for verification and report. As per the order dated 19.12.2018, a Police verification report from the Officer-in-Charge of Chapar P.S. was placed before the learned Tribunal and on perusing the contents thereof, the learned Tribunal had recorded in the order dated 19.12.2018 that as per the said report, the name of the father of the petitioner is Sagor Ali and not Jahur Ali and that Jahur Ali is her paternal uncle.

14. In this case the learned Tribunal, on its own, had called for a verification report from the concerned police station about the name of petitioner's father and as per order dated 19.12.2018, a report from the Officer-in-Charge of Chapar P.S. was received by the learned Tribunal, which reveals that the name of the father of the petitioner was Sagor Ali.

15. The TCR further reveals that the matter was heard by the learned Tribunal on 02.08.2019. The case was next fixed for order on 03.09.2019. Order dated 03.09.2019, discloses that a verification report of voter list of 1966, 1970 and 1997, forwarded by the Election Officer, Goalpara together with the certified

copies of the said three voter lists was received by the learned Tribunal. Accordingly, the matter was re-heard on 09.09.2019 and 09.10.2019. The voter list of 1970 discloses the name of Omar Kaji, the projected brother of the petitioner along with Sagor Ali Sheikh and Mojiron Bibi, wife of Sagor Ali, who are the projected father and mother of the petitioner.

16. In this case the learned Tribunal had received (i) the verification report of the Officer-in-Charge of Chapar P.S. and (ii) the verification report regarding voter list on 1960, 1970 and 1997 from the Election Officer, Goalpara along with the certified copy of the said three voter lists.

17. However, without considering the contents of the police verification report, the learned Tribunal had rejected the evidence of the petitioner that Sagor Ali Sheikh was her father and Jahur Ali was her paternal uncle. In the opinion of the Court, when a police verification report is called for by a Foreigner's Tribunal in its own motion, the same was required to be considered in the opinion. However, the learned Tribunal had not discussed about the police verification report in its opinion.

18. Similarly, the petitioner had taken steps to summon the Election Officer, Goaplara as witness in the case to prove the voter lists. On receipt of the summons, the Election Officer, Goaplara had sent certified copy containing two sheets each of the voter lists of 1966, 1970 and 1997. The voter list of 1970 of village- 46, Chitolmari, P.O. Chunari, Revenue Circle Lakhipur of District Dhubri in respect of 44, Goalpara West LAC contains the name of Sagor Ali Sheikh, Mojiron Bibi and Omar Kaji at serial nos. 138, 139 and 140 and Omar Kaji is shown to be son of Sagor Ali Skeikh. The order dated 03.09.2019 shows that the certified copy of voter list of 1970, 1977 and 1997 was before the

Tribunal after the hearing was concluded on 02.08.2019. Though the learned Tribunal had re-heard the matter, but the said voter lists have not been discussed in the opinion impugned herein.

19. It is reiterated at the cost of repetition that as per the TCR, the petitioner had filed her evidence-on-affidavit on 16.05.2017. She was cross-examined and discharged on 07.06.2017. Thereafter, an order was passed on 20.12.2017 to call for the police verification report of her father, which was made a part of record by order dated 19.12.2018. Thereafter, the certified copies of three voter lists of the year 1966, 1970 and 1997, as forwarded by the Election Officer, Goalpara was made a part of the record. These two sets of documents were not considered by the learned Tribunal in its opinion.

20. We are pained to record that the Court has not received the able assistance from the petitioner's counsel because perhaps the learned counsel for the petitioner had not consulted the TCR. The observations made in the foregoing paragraphs 13 to 19 have been made on the basis of examination of TCR by the Court. It may be mentioned that the matter was heard on 30.08.2024 and the views of the Court was expressed. However, in course of perusal of the records the hereinbefore referred two set of documents has come to the notice of the Court and therefore, the matter was re-listed on 05.09.2024 and the learned counsel for the parties were re-heard.

21. In light of the discussions made in paragraphs 13 to 19 above, the Court is of the considered opinion that as the learned Member, Foreigners Tribunal No. 8th, Goalpara in F.T. Case No. 754/2017, had not considered the two set of documents, viz., (i) police verification report, and voter lists of 1966, 1970 and 1997, as forwarded by the Election Officer, Goalpara, which were

made a part of the record, the Court is inclined to set aside the opinion dated 15.10.2019, passed by the Foreigners Tribunal No. 8th, Goalpara in F.T. Case No. 754/2017 and the matter is remanded back to the said learned Tribunal for a fresh decision after considering the above referred two sets of documents.

22. Resultantly, the petitioner, namely, Sonabhan Bibi @ Sonabhan Nessa is directed to appear before the said learned Tribunal within a period of 30 days from the date of the order, i.e. within 05.10.2024 and by producing a certified copy of this order, await for further order of the learned Tribunal.

23. The petitioner shall remain on bail in terms of the order dated 02.08.2021, passed in this writ petition till the culmination of the proceeding before the said learned Tribunal. However, in the event the petitioner does not appear before the learned Foreigners' Tribunal within the 30 (thirty) days time allowed from the date of this order, the bail granted to the petitioner shall stand lapsed and revoked and it would be permissible for the police authorities to apprehend the petitioner and keep her in the designated transit camp.

24. This writ petition is, accordingly, disposed of.

25. The Registry shall return the TCR back to the learned Foreigners' Tribunal expeditiously.

JUDGE

JUDGE

Comparing Assistant