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08/02/2022	08/02/2022	14/02/2022	14/02/2022	15/02/2022

**BEFORE THE FOREIGNERS' TRIBUNAL, DHUBRI 8TH,
DHUBRI: ASSAM**

Present: K.K. Chandak,
Member,
Foreigners Tribunal,
Dhubri 8th at Dhubri, Assam

Case No.: **FT-8/489/GKJ/2018**
(S.P.(B) Dhubri R/ I.M.(D) T. Case No. 4479/98)

Referring Authority: Union of India & Others
Vs.

Proceedee: **Moyna Barmani**



Advocate for Referring Authority : Mr. S.P. Chakraborty, Asstt. Govt. Pleader
Advocate for Proceedee : Mr. I. Azad, Advocate

Date of Argument : 22-12-2021

Date of Final Order : 11-01-2022

F I N A L O R D E R

The Reference case was originally forwarded by the Superintendent of Police, (B) Dhubri, District-Dhubri, Assam under the I.M. (D) T. Act, 1983. The case of the Referring Authority is that the E.R.O. got conducted verification of citizenship status of Proceedee. On the basis of particulars submitted by LVO, the case was registered by E.R.O., 24-Gauripur LAC against the Proceedee, suspecting the Proceedee as a Doubtful Voter/Foreigner. Accordingly, the Superintendent of Police (B), Dhubri, having reasonable doubts about the nationality status of the Proceedee, forwarded the Reference case. The case was originally registered as I.M.(D)T. Case No. 20225/D/04, however, subsequently re-numbered as F.T. Case No. 2592/GKJ/11 under the provisions of the Foreigners' Act, 1946 read with Foreigners' (Tribunals) Order, 1964. Later, upon constitution of 64 nos. of Additional Tribunals as per Order of the Hon'ble Supreme Court, the Case was received on transfer by this Tribunal, registered and taken up for disposal. There appeared sufficient grounds to proceed and accordingly, notice was issued, giving the Proceedee an opportunity to show cause in respect of the matter.

S/d
Member
Foreigners Tribunal (8th
Dhubri

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On issuance of notice by this Tribunal, the Proceedee appeared and submitted written statement accompanied with copies of documents in defence, claiming, inter-alia to be an Indian citizen as well as claimed to be possessed of sufficient documents to prove herself as an Indian citizen. After affording opportunity to Proceedee to tender evidence and submit documents in support of her defence, I heard arguments of both sides and also perused the evidence on record.

Point for determination:

Whether the Proceedee is a 'Doubtful Voter' / Illegal Foreigner of the stream Post 1971 or of any other stream.

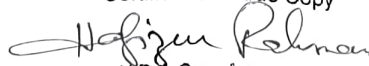
Concise Statement of Facts and Evidence Produced:

In this Reference case, the Referring Authority examined no witness. On the other hand, the Proceedee in her written statement and evidence denied the allegation of being an illegal migrant / illegal foreigner and claimed to be a citizen of India by birth, belonging to Rajbangshi community and a permanent resident of village- Kedar, Pt-I under P.S.-Golakganj in the district of Dhubri, Assam. The Proceedee, inter alia, claimed to have been born at village- Kedar, Pt-III under P.S.-Golakganj in the district of Dhubri, Assam, further claiming the name of her father as Harishchandra Ray and mother as Thutuli Ray who resided at village-Kedar, Pt-III. The Proceedee stated the name of her two brothers as Udra Kanta Ray and Bhadra Kanta Ray. The Proceedee stated the name of her husband as Dharani Kanta Ray @ Dharani Kanta Barman, S/o Maichan Barman of village- Kedar, Pt-I and mentioned the name of her four nos. of children in the written statement. The Proceedee claimed that her own name alongwith the name of her husband and other family members was recorded in the NRC of the year 1951 at village- Kedar, Pt-I under then district of Goalpara, now Dhubri, Assam and subsequently, due to erosion of river Naojal, the husband of Proceedee alongwith her and other family persons shifted to adjacent village- Kedar, Pt-III and began to stay there on the land of some other person as a worker. The Proceedee claimed that in her and her husband's community, the surname as Ray, Barman, Sarker are frequently used which is also appearing with her and ancestors' names in her documents. The Proceedee claimed that her name alongwith her husband, brother-in-law namely Monohari (Monai) Barman and brother-in-law's wife namely Ghritomoyee Barmani was recorded in the voter list of the year 1966 at village- Kedar, Pt-III under No. 35 Golakganj LAC though the age of Proceedee was wrongly recorded therein as 25 years instead of correct age as 35 years and again, their names were

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enrolled as voters in the year 1970. The Proceedee stated that her husband expired after the year 1970 and her name alongwith above named brother-in-law and sister-in-law was recorded in the voter list of the year 1977 at same village of Kedar, Pt-III under No. 24 Gauripur LAC and the name of Proceedee alongwith her daughter namely Fulo Barmani was recorded in the voter list of the year 1985 at same village. The Proceedee claimed to have been holding one Ketcha Patta of land of the year 1994 and Jamabandi of land in her name alongwith another Pattadar of village- Kedar, Pt-I. The Proceedee stated that in the year 1990-91, she again returned and began to stay at her original village of Kedar, Pt-I. The Proceedee prayed for dismissal of the case against her.

The Proceedee claimed to be possessing sufficient documents to prove her Indian citizenship. In course of hearing, the Proceedee produced and exhibited several documents to substantiate her claim of being an Indian citizen.

Ext. A - One handwritten copy of NRC Entry, 1951, (seal of the issuing authority not readable as faded) dated 14-07-93 of village- Kedar, P.S.-Golakganj, Sub-Division-Dhubri in which the name of Dharani Kanta Ray, S/o Moi Chand and Moynamoti Devi, W/o Dharani, claimed respectively as husband and self by the Proceedee, is recorded alongwith five others, claimed as in-law family persons by the Proceedee.

Ext. B - 'E' certified copy of extracts from Electoral Roll for the year 1966 of Part No. 146, House No. 151 of Village- 211 Kedar, Pt-III under No. 35 Golakganj LAC, Assam in which the name of Dhoroni Kanta Barman-Moichan, Monhori Barman-Moichan, Moyna Barmani-Dhoroni and Mritamoi Barmani-Monhori, claimed respectively as husband, brother-in-law, self and wife of brother-in-law by the Proceedee, is enrolled as voters.

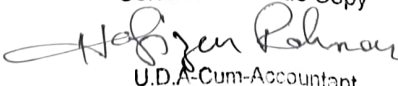
Ext. C - 'E' certified copy of extracts from Electoral Roll for the year 1970 of Part No. 146, House No. 123 of Village- 211 Kedar, Pt-III under No. 35 Golakganj LAC, Assam in which the name of Dhoroni Kanta Ray-Moichan, Monhori Barman-Moichan, Moyna Barmani-Dhoroni and Mritamoi Barmani-Monhori, claimed respectively as husband, brother-in-law, self and wife of brother-in-law by the Proceedee, is enrolled as voters.

Ext. D - 'E' certified copy of extracts from Electoral Roll for the year 1977 of Part No. 215, House No. 63 of Village- 211 Kedar, Pt-III under No. 24 Gauripur LAC, Assam in which the name of Monhori Barman-Moichan, Moyna Barmani-Dhoroni and Ghritimoi Barmani-Monhori, claimed respectively as brother-in-law, self and

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wife of brother-in-law by the Proceedee, is enrolled as voters alongwith one another.

Ext. E - 'E' certified copy of extracts from Electoral Roll for the year 1985 of Part No. 64, House No. 167 of Village- 64 (Kha) Kedar, Pt-III under No. 24 Gauripur LAC, Assam in which the name of Moyna Barmani-Dhoroni and Fulo Barmani-Dhoroni, claimed respectively as self and self's daughter by the Proceedee, is enrolled as voters.

Ext. F - One Ketcha Patta document of land of village-Kedar, Pt-I, bearing the signature of revenue authority dated 29-10-94, signed (stamped signature) by Assistant Settlement Officer in which the name of Moyna Moyee Barmani, W/o Dhoroni Barman, claimed as self by the Proceedee, is recorded as one of the proposed pattadar alongwith one another.

Ext. G - One certified copy of Draft Jamabandi of land, signed on 29-10-94 of village- Kedar, Pt-I, District-Dhubri, Assam in which the name of Moynamoyee Barmani, W/o Dhoroni Barman, claimed as self by the Proceedee is mentioned as one of the Pattadar alongwith another.

The Proceedee produced as annexure documents xerox copies of extracts of voter list of the year 1966 & 1970 of village- 211 Kedar, Pt-III in which her name alongwith her husband and other in-law family persons,, as claimed, is enrolled as voters.

The Proceedee presented herself for cross-examination (DW 1). The Proceedee appeared to be more than 80/90 years of age and could not state her age though her year of birth in Annexure A document of the Reference case was mentioned as 1942. During cross-examination, the Proceedee, inter alia, responded that she could not say where her father was born. The Proceedee said that she had got no document of birth in her name nor had school education. The Proceedee could not say the name of her grandparents though responded that her grandparents expired before her birth. The Proceedee refuted the suggestion of being an illegal foreigner and of making false statements.

The Proceedee produced no other witness.

Opinion and reasons thereof:

I have perused and scrutinized the oral evidence as well as have meticulously gone through the documents and materials available on record in the proceedings.

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So far as the evidentiary value of Ext. A document, being copy of NRC document of the year 1951 is concerned, this document cannot be taken into consideration as the document is of no evidentiary value in view of Section 15 of the Census Act, 1948 as well as it has already been held by the Hon'ble Gauhati High Court in the case of *Bhanbhasa Sheikh v. Union of India (1970 Assam LT 206)* that the statements or certificates based on NRC 1951 is not admissible in evidence.

However, going through Ext. B document, supported by Ext. C and other documents, it appears that the name of Proceedee herself was enrolled as a voter in the year 1966 and the Proceedee had been residing in India / the State of Assam as Indian citizens during or even before the year 1966. On consideration of Ext. B, supported by Ext. C document coupled with her evidence, there seems no necessity of establishing linkage of Proceedee with her ancestors as the Proceedee herself appears to had been residing in the State of Assam as an Indian citizen during or even prior to the crucial date of 01-01-1966. The evidence and documents produced in the case have not been contradicted or disputed by the Referring Authority side. I have gone through the statements of Proceedee in the case and nothing found adverse to shatter the defence statements of Proceedee. There appear very minor discrepancies in the name of the Proceedee and surname of Proceedee and her ancestors in some documents. However, in entirety of the documents produced, the discrepancies appear to be minor mistakes and do not lead to conclusion that the names belong to distinct persons and as such, may be ignored.

Thus, in consideration of entirety of evidence and documents produced, it appears that the Proceedee had been residing in India/the State of Assam as an Indian citizen before the crucial date of 01-01-1966 and had not illegally entered into the territory of the State of Assam, as suspected and thus, the Proceedee cannot be termed as an illegal foreigner. As such, the documents have been found to be reliable, trustworthy and acceptable being in order and having been issued by the proper authorities and as such, proved. The documents have thus got evidentiary value. Thus, the Proceedee from all possible aspects of the matter, cannot be termed or declared to be a foreigner of the stream Post 1971, as suspected. As such, the Proceedee has been able to discharge the burden cast on her under Section 9 of the Foreigners' Act, 1946 to prove her claim that she is not an illegal foreigner under the law.

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14/02/2022

O R (6) D E R

The Reference case is disposed of on contest. In view of the discussions made above, in considered opinion of this Tribunal, the Proceedee appears as not being a foreigner of the stream Post 1971 or of any other stream, as suspected. Therefore, the Reference case against the Proceedee is answered in negative.

Send a copy of this Final Order to the District Magistrate, Dhubri, the Election Office, Dhubri and the Superintendent of Police (B), Dhubri for information and necessary action.

The Final Order containing the opinion of this Tribunal is delivered under my hand and seal on this the 11th day of January, 2022 at Dhubri, Assam.

Dictated and corrected by me

Sd/-
Member,
Foreigners' Tribunal (8th)
Dhubri
Dated, Dhubri the / /2022

Memo No.DFT-8/2022/

Copy for information & Necessary action to:-

- 1) The Superintendent of Police, (Border), Dhubri.
- 2) The District Magistrate, Dhubri.
- 3) The Election Office, Dhubri.

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14/02/2022
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