

GAHC010004352023



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

Case No. : WP(C)/154/2023

Smti. Maya Barman @ Maya Rani Barman
Daughter of Lt. Manteswar Barman,
Wife of Bishnu Barman @ Bishnu Chandra Barman,
Village- 5 Patta, Harmoti, P.O. Merbil,
Mouza & P.S. Laluk, District- Lakhimpur, Assam.

...PETITIONER

VERSUS

1. The Union of India,
represented by the Secretary to the Govt. of India, the Ministry of Home
Affairs, Griha Mantralaya, New Delhi.
2. The State of Assam
represented by the Secretary to the Govt. of Assam
Home Department, Dispur, Guwahati-781006.
3. The Election Commission of India
represented by the Chief Election Commissioner of
India, Nirvachan Sadan Ashoka Road,
New Delhi- 110001.
4. The State Co-ordinator,
National Registration of Citizen, Assam, Bhangagarh, Guwahati-781005.
5. The Deputy Commissioner
Lakhimpur, P.O. Lakhimpur
District- Lakhimpur, Assam, Pin- 787001.

6. The Superintendent of Police (B), Lakhimpur
P.O. Lakhimpur, District- Lakhimpur, Assam
Pin- 787001.

....RESPONDENTS

Advocates for the Petitioner : Mr. S. C. Biswas,

Mr. F. A Hassan,
Ms. S. Sengupta,
Ms. U. Nanda,
Ms. J .Ghosh,
Ms. S. Debnath.

Advocates for the Respondents : Mr. G. Sarma,
Standing counsel, Home Department, Assam,
representing the respondent Nos. 2 & 6.

Mr. P. Sharma,
Addl. Sr. Govt. Advocate, Assam,
representing the respondent No.5.

::BEFORE::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of Hearing : 14.12.2023

Date of Judgment & Order : 11.01.2024

JUDGMENT & ORDER

(M. Thakuria, J)

Heard Mr. S. C. Biswas, learned counsel for the petitioner and Mr. G. Sarma, learned Standing counsel, Home Department, Assam for the respondent Nos. 2 & 6 as well as Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No. 5.

2. The respondent No.1, the Union of India as well as respondent No.3, the Election Commission of India remained unrepresented.

3. In pursuant to a Reference received from the Superintendent of Police (Border), Lakhimpur, North Lakhimpur, Assam, the learned Member, Foreigners' Tribunal-1st, Lakhimpur, North Lakhimpur in F.T.(1st) Case No. 4057/2011 (District No.23/1997) had passed the impugned Final Order/Opinion dated 22.11.2019 declaring the petitioner to be a foreigner under the Foreigner Act, 1946, who had illegally entered into the territory of India (Assam) from the specified territory of Bangladesh after 25.03.1971.

4. On being highly aggrieved and dissatisfied with the impugned Final Order/Opinion dated 22.11.2019 passed by the learned Member, Foreigners' Tribunal No. 1st, Lakhimpur, North Lakhimpur, the petitioner has preferred

the instant petition under Article 226 of the Constitution of India for issuance of writ in the nature of Certiorari/Mandamus and/or any other appropriate writ, order or direction of like nature.

5. The petitioner stated that she is an Indian citizen by birth and was born and brought up at village Gopalpur, District-Cooch Behar, West Bengal; she studied up to Class-V (five) at Gopalpur High School and as per the School Certificate, her date of birth is 15th of April 1961; she got married with one Bishnu Barman, son of Late Shiben Chandra Barman of Harmoti Gaon, District-Lakhimpur. However, upon a reference being made by the Superintendent of Police (Border), Lakhimpur, Assam, the aforesaid F.T.(1st) Case No. 4057/2011 (District No.23/1997) was registered against her and on receipt of notice of the same, the petitioner appeared before the Tribunal and contested the case by filing her Written Statement, adduced her evidence-in-chief as D.W.1 along with relevant and supported documents to prove her nationality. But, the learned Member, Foreigners' Tribunal No. 1st, Lakhimpur, North Lakhimpur did not consider the documents she relied on and passed the impugned Final Order/Opinion dated 22.11.2019 arbitrarily without appreciating evidence, thereby declaring the proceedee/petitioner to be a foreigner who had entered into the territory of India (Assam) illegally from the specified territory of Bangladesh after 25.03.1971.

6. Mr. S. C. Biswas, learned counsel for the petitioner has submitted that the petitioner as D.W.1 has exhibited the Voter Identity Card issued in her name as Exhibit-1 along with the School Transfer Certificate as Exhibit-2 to prove her linkage with her father. Mr. Biswas, learned counsel also stated that though the petitioner annexed a photo copy of a Ration Card and an

affidavit sworn by her mother etc. before the Tribunal, but inadvertently those certificates were not exhibited by her. It is submitted by Mr. Biswas that the petitioner produced the School Transfer Certificate to prove her linkage with her father Lt. Monteswar Ray, stating further that father of the proceedee had purchased a parcel of land in the year 1960, but, due to flood the Sale Deed of the said land got damaged and therefore, the petitioner could not produce the original copy of said Sale Deed before the Tribunal.

7. Mr. Biswas, learned counsel also submits that the documents so provided by the petitioner/proceedee was sufficient to prove herself to be the Citizen of India; however, the learned Tribunal without considering the documents which were relied by the petitioner/proceedee, passed the impugned Final Order/Opinion dated 22.11.2019 arbitrarily and declared her as a foreigner of post 1971 stream, which is liable to be set aside and quashed.

8. In this context, Mr. G. Sarma, learned Standing counsel, Home Department, Assam has submitted that the petitioner could not produce any document to establish herself to be the daughter of her projected father, one Lt. Monteswar Ray who is claimed to be the Citizen of India by the proceedee/petitioner. Mr. Sarma learned standing counsel also submitted that though the petitioner/proceedee has submitted one School Transfer Certificate as Exhibit-2, but she failed to prove the said certificate as well as its contents by producing any reliable evidence of the issuing authority. In that context, Mr. Sarma relied on a decision of the Hon'ble Apex Court in the case of *Life Insurance Corporation of India and Another Vs. Ram Pal Singh Bisen*, reported in (2010) 4 SCC 491, wherein the Hon'ble Supreme Court

laid down that — *“admission of a document in a Court may amount to admission of its contents but not its truth”*.

9. Mr. Sarma, learned standing counsel further submits that the Voter Identity Card along with other documents as stated by the petitioner/proceedee in her Written Statement are not at all sufficient to prove herself to be the Citizen of India as claimed by her as she completely failed to prove any link with her projected father whom she stated to be an Indian Citizen. According to Mr. Sarma, the learned Tribunal has not committed any error or mistake in passing the impugned Final Order/Opinion dated 22.11.2019. Mr. Sarma, learned Standing counsel, Home Department, Assam submitted that the petitioner/proceedee failed to adduce reliable evidence exhibit requisite documents so as to prove her linkage with her projected father and grandparents and thereby the petitioner failed to discharge her burden under Section 9 of the Foreigners’ Act, 1946.

10. We have heard the submissions made by the learned counsels of both sides, and also perused the case record that was called for from the concerned Foreigners’ Tribunal as well as the documents exhibited by the petitioner before the Tribunal and annexed by her in the writ petition. It is the case of the petitioner/proceedee that she is an Indian Citizen by birth and her father Lt. Monteswar Ray was also an Indian Citizen, who purchased a land in India in the year 1960, but, she could not produce the Sale Deed before the Tribunal as it was destroyed due to burning of the Record Room in the year 1974. Thus, it is seen that though she claimed that her father purchased a land in the year 1960 and she could not produce any document in support of the same, but we found that the petitioner/proceedee at the

same time failed to produce any document like continuous/regular payment of land revenue for the said land before the Tribunal by exhibiting Land Revenue Paying Receipt on behalf of her projected father.

11. We have seen that before the Tribunal the petitioner exhibited a Transfer Certificate issued in her name by Gopalpur High School, Gopalpur, Cooch Behar, West Bengal issued on 08.08.2015; but, she could not adduce any evidence of the Headmaster of the said High School, i.e., its issuing authority or any authorised teacher and/or employee of the said High School to prove the contents of the said certificate exhibited by the petitioner, so as to prove herself to be the daughter of her projected father Lt. Monteswar Ray.

12. On perusal of the records of the case, we found that the petitioner did not produce any voter lists of the years 1965 or 1966 and 1971 to prove that her parents had cast vote in the years 1966 and/or 1971, rather in her cross evidence the petitioner admitted that she neither could produce any voter list of 1965-1966 or 1970-71 in the name of her projected parents nor she could produce any voters lists to prove that she cast vote along with her said projected parents, so as to prove her linkage with her projected parents. We found that the petitioner not only failed to prove her linkage with her projected father Lt. Monteswar Ray but also failed to produce any documents to prove that her projected father was an Indian Citizen.

13. From the records we found that the petitioner/proceedee also admitted in her cross evidence that her father was born and brought up in Bangladesh and still some family members of her father are residing in Bangladesh and that she, after her marriage, came to reside in Assam and she admitted that

she could not produce any document to prove that her projected father stayed in India prior to the year 1971 by producing any document. Though the petitioner pleaded that her father had purchased a plot of land in India in the year 1960 but we found that she failed to prove her said plea by placing any reliable document and evidence in that regard. So the question arises if a person can purchase a land in the year 1960, then why the petitioner/proceedee could not produce any voters list of the year 1966 or 1971 to prove her projected father as an Indian Citizen who claimed to have purchased land in the year 1960.

14. Thus, it is seen that the petitioner/proceedee could not produce any reliable exhibits and/or documents to prove her linkage with her projected parents nor could she produce any document and/or voters list prior to 1966-71 of her projected parents. We have seen that the petitioner/proceedee annexed one Certificate issued by the Gopalpur Gram Panchayat, Cooch Behar-II Panchayat Samity, Gopalpur, Cooch Behar, which is also available in the case record, but the same was not exhibited by the petitioner nor any evidence was adduced by her in that regard to prove the same. Further, there is no other document to establish herself to be the Indian citizen and thus, we found that the petitioner failed to discharge her burden under Section 9 of the Foreigners' Act, 1946 to prove herself to be the Indian citizen.

15. From the above discussion, we found that the Tribunal after due appreciation of the entire facts of the case and evidence adduced on behalf of the petitioner arrived at the impugned opinion/judgment dated 22.11.2019 which is without any illegality and perversity. We, therefore, are

of the view that the impugned final order/opinion dated 22.11.2019 passed by the learned Member, Foreigners' Tribunal No. 1st, Lakhimpur, North Lakhimpur, Assam in Lakhimpur FT (1st) Case No. 4057/2011 (District No. 23/1997) holding the petitioner to be a foreigner under the Foreigners' Act, 1946 who had illegally entered into the territory of India (Assam) from the specified territory of Bangladesh on or after 25.03.1971 does not call for any interference.

16. Accordingly, this writ petition, being devoid of merit, stands dismissed.

17. The interim order dated 17.10.2023 passed earlier in this proceeding, stands vacated/hereby recalled.

18. Registry shall return the records of Lakhimpur FT (1st) Case No. 4057/2011 (District No. 23/1997) to the Foreigners' Tribunal No. 1st, Lakhimpur, North Lakhimpur, Assam along with a copy of this order.

19. Registry shall also forward a copy of this order to the Superintendent of Police (Border), Lakhimpur, North Lakhimpur, Assam for its information.

JUDGE

JUDGE

Comparing Assistant