

(2020) 01 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (C) No. 5378 Of 2017

Amina Khatun @ Amena Khatun

APPELLANT

Vs

Union Of India And 2 Ors

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Foreigners Act, 1946 — Section 2(a)
Constitution Of India, 1950 — Article 226

Citation : (2020) 01 GAU CK 0014

Hon'ble Judges : Manojit Bhuyan, J; Parthivjyoti Saikia, J

Bench : Division Bench

Advocate : B Kaushik

Final Decision : Dismissed

Judgement

1. Heard learned counsel, Mr. D. Deka, appearing for the petitioner. Also heard learned counsel, Mr. E. Kalita, learned Standing Counsel, Foreigners Tribunal and Ms. A. Verma, learned Standing Counsel, NRC.

2. Challenge in this writ petition is to the order dated 12.08.2016, passed by the learned Member, Foreigners Tribunal No. 2, Boko, Kamrup(R) in BFT Case No. 184/2016, declaring the petitioner to be a foreigner of post 1972 stream.

3. In this case the reference was made by the Superintendent of Police(Border), Kamrup, Guwahati. The learned tribunal issued notice to the petitioner and accordingly the petitioner Amina Khatun alias Amena Khatun appeared before the Tribunal and contested the proceeding by filing a written statement on 29.6.2016.

4. She thereafter submitted her evidence as well as the evidence of a person called Bhumidhar Pathak in order to prove that she is not a foreigner within the meaning of section 2(a) of the Foreigner Act, 1946. The petitioner exhibited 7 numbers of documents namely 1) Exhibit A is the NRC certificate of the year 1951 showing the name of her father as Sobahan Sheikh, 2) Exhibit B is the

legacy data of the year 1970 showing the father of the petitioner to be Abdul Sobahan, 3) Exhibit c is the voter list of 1970 under 52 Baghbar L.A.C, bearing the name of the petitioner as Abdul Sobahan, 4) Exhibit D is the voter list of the year 1997 of 52 Baghbar L.A.C, showing the name of the petitioner in serial No. 1156, 5) Exhibit E is the voter list of the year 2015 under 48 Boko L.A.C, showing the name of the petitioner in serial No. 416, 6) Exhibit F is the voter ID card of the petitioner issued by the Electoral Registration Officer, 7) Exhibit G is the certificate of village head man i.e. Goan Bura.

5. In her written statement, the petitioner has claimed that her father Sobahan Sheikh was a citizen of India by birth and his name was entered in the NRC of 1951. She also claimed that in the year 1970, the name of her father has been shown as Abdul Sobahan, in the legacy data. The petitioner has further stated in the written statement that the name of her father Abdul Sobahan had appeared in the voter list of 1970. She has claimed that her name appeared in the voter list of 2015. According to the petitioner Abdul Sobahan and Sobahan Sheikh are one and the same person.

6. Finally, on 12.08.2016 the learned Tribunal gave the opinion holding that the petitioner failed to prove her relationship with her projected father and for that reason the Tribunal declared the petitioner to be a foreigner.

7. Thereafter the petitioner approached this Court by filing the writ petition No. WP(C) 5672/2016 challenging the order of the Tribunal dated 12.08.2016. After that, on 25.05.2017, the petitioner had withdrawn the aforesaid writ petition and went back to the tribunal and filed a Review Application there on 16.06.2017. This time also, on 28.07.2017, the learned Tribunal rejected the Review Application on the ground that the petitioner had failed to prove her link with her projected father.

8. We have given our anxious consideration to the matter.

9. Exhibit A is the NRC of the year 1951 showing the name of Sobahan Sheikh, the projected father of the petitioner. This Court in Bhanbhasa Sheikh-Vs- Union of India, reported in 1970 Assam LT 206 has already held the statements or certificates based on NRC 1951 is not admissible in evidence. We are in complete agreement with the view expressed in Bhanbhasa Sheikh(supra).

10. Be it as it is, the petitioner has claimed that Sobahan Sheikh or Abdul Sobahan is her father but to that effect, in order to prove that she is the daughter of Sobahan Sheikh / Abdul Sobahan no documents have been filed.

11. In the instant case, the petitioner had filed the Exhibit G, the certificate of DW 2, Bhumidhar Pathak, the Gaon Burah of Jamlai (Nonke) village. The DW 2 has certified that the petitioner Amina Khatun is the wife of Hafijuddin Sheikh. In this certificate, the Exhibit G, the DW 2 has given a note stating that the name of the father of the petitioner has already appeared in the voter list of 1970. We find that this part of the matter is not acceptable in the eye of law. In Rupjan

Begum Vs. Union of India, reported in (2018) 1 SCC 579, the Hon'ble Supreme Court has clarified that such certificate issued by the Gaon Panchayat Secretary is basically meant to be used by a married women and is used as a linkage document of such married women. In Rupjan Begum (supra), the Hon'ble Supreme Court has laid down that such a certificate by no means proof of citizenship. The Apex Court has held that such a certificate has to be verified at two stages i.e., a verification of the genuineness of the documents and secondly a verification of the contents.

12. Thus it is now clear that the petitioner failed to prove her link with her projected father.

13. After perusal of the impugned order dated 12.08.2016, we are of the opinion that the Tribunal has correctly appreciated whatever evidence has been adduced by the petitioner before it and thereafter, rendered the opinion. The impugned finding being a finding of the fact, a writ court exercising jurisdiction under Article 226 of the Constitution of India would not, ordinarily, interfere with such a finding of fact unless there is perversity. The jurisdiction of the High Court exercising powers under Article 226 of the Constitution of India is supervisory and not appellate.

14. We have revisited the evidence led by the petitioner just to satisfy ourselves as to whether there was any perversity in the opinion of the Tribunal. We could not find perversity. This being the position, we find the instant writ petition to be devoid of any merit and for that matter the writ petition is dismissed.

15. Send back the case record to the Tribunal along with a copy of this order. The concerned State authorities shall take necessary action accordingly.