
(2016) 05 GAU CK 0084
In the Gauhati High Court
Case No : WP(C) No. 792 of 2016

Asiya Khatun

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Foreigners Act, 1946 — Section 9

Citation : (2017) 1 GauLT 163

Hon'ble Judges : Mrs. Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : Mr. A.R. Sikdar, Advocate, for the Petitioner; Ms. G. Sarmah, CGC and Mr. M. Bhagawati, GA, for the Respondents

Final Decision : Disposed Off

Judgement

Mrs. Rumi Kumari Phukan, J. (CAV) - Heard Mr. A. R. Sikdar, learned counsel for the petitioner and Ms. G. Sarmah, learned Central Government counsel and Mr. M. Bhagawati, learned Government Advocate Assam.

2. By this application under Article 226 of the Constitution of India, the petitioner herein has challenged the legality and validity of the judgment and order dated 06.10.2015, wherein F.T.C (6) Case No.42/2015 passed by the learned Member Foreigners Tribunal No. 6, Tezpur, Sootea. The prayer of the petitioner to review the aforesaid order was also rejected by the learned Tribunal by order dated 03.11.2015 which is also the impugned in this case.

3. The brief case of the petitioner is that an IM(D)T reference No. TZ(B)/850/BNC/LAC, dated 04.04.2001, was made raising doubt about the nationality of the petitioner, which was subsequently registered as FT-42/2015. In response to the notice served upon the petitioner she appeared and contested the proceeding by filing a written statement contending inter-alia that she is a citizen of India by birth and brought up in the behests Barbala P.S. Borpeta. And her father's name is Asrob Ali whose name appeared in the voter list of 1965 and 1970.

4. The petitioner examined herself in support of her case and produced the documents accordingly. The learned Tribunal appreciated the evidence and documents so field by the petitioner and came to a findings as below:

"6. I have gone through the evidence on record very carefully and the documents relied upon by the OP. The OP (as DW 1) has stated in her evidence in chief on oath that the name of the father of OP is Late Asrof Ali. The father of the OP had casted vote in 1965 and 1970 at Village-Barbala, P.S.-Barbeta, district - Kamrup, Assam, in 53 No. Sarukhetri LAC. Ext -1 and 2 are the voter list of 1965 and 1970 showing the name of one Asrob Ali. Ext. 3 is the voter list of 1997 showing the name of the OP herself along with her husband. Ext. 4 is the certificate issued by the Secretary, Kamalia Gaon Panchayat, ditrict-Sonipur, Assam showing the name of the OP, daughter of Asrof Ali (father) and Tohiron Nessa (mother) as link document, which is also not proved by the OP by examining the Secretary, Kumalia Gaon Panchayat.

7. On careful perusal of the evidence on record and the documents relied upon the OP, it appears that the name of the OP is Late Asrof Ali. The certificate of the Gaon Panchayat has also reflected the name of the OP as Asrof Ali. But in the written statement the OP has stated that her father's name is Asrob Ali who casted votes in the year 1965 and 1970 in India. Accordingly, two voter lists for the year 1965 and 1970 has been exhibited vide Ext. 1 and 2 showing the name of said Asrob Ali. So it cannot be presumed that the father of the OP is Asrob Ali and not Asrof Ali. Further, the OP in her 50 years of age has no single document of her own to proof that she is a genuine citizen of India. On the other hand, the OP had casted vote in India only in the year 1997 and her name also been entered in the Electoral Roll of Government of India in the year of 1997 only."

5. We have considered the above findings and by the learned Tribunal and considered the submission by the learned counsel for the petitioner that the petitioner has mentioned the name of her father Asrob Ali in her written statement and her documents also supported her case but the learned Tribunal has wrongly recorded the word as "Asrof Ali" instead of "Asrob Ali". It has also been urged by the learned counsel for the petitioner that the Tribunal has discarded the evidence adduces by the son of the petitioner, while making the review prayer that the father of the petitioner is "Asrob Ali" and not "Asrof Ali".

6. After careful appreciation of the evidence on record, it emerges though the petitioner has tried to rely upon the voter list of 1965 and 1970 which stated to be comprises the name of her father and she has also relied upon the exhibit -3 vide annexure-VII issued by Secretary, Kumalia Gaon Panchayat. And on the basis of which she has submitted that the Court has wrongly recorded the name of her father. But, it is to be noted that the said certificate issued by the Secretary does not tally about the name of the father of the petitioner as it also refers one Asrof Ali as father of the petitioner. In view of above, how it can be hold that the learned Tribunal has wrongly recorded the name of father of the petitioner. That apart no any linkage documents have been produced to prove

the aforesaid averment made in WS. The officer who issued the Exhibit-IV also not examined by the petitioner and apart from the voter list 1997 the petitioner has not produce any other voter list and if her father was 50(fifty) years of age in 1965 and aged about 55(fifty five) years in the year 1970, then the petitioner name might have been included in earlier voter list, which is not produced. The learned trial Court has rightly held that the petitioner has miserably failed to discharge her burden to prove that she acquired citizenship of India by birth through Indian parents.

7. In the face of the evidence on record, we are of considered opinion that there is no illegality or impropriety in appreciation of the matter by the learned Tribunal. The question of nationality is to be proved by a proceedee in a reasonable manner with cogent evidence and document. Mere filing of documents in a scattered manner without proving the linkage evidence one cannot claim the nationality that too by birth. The subsequent evidence so adduced by the son of the petitioner at the time of review of the petition cannot develop the case of the petitioner in view of her own pleading and documents and the learned Tribunal has rightly rejected her case and it has been held that held that the petitioner has failed establish her case as required under Section 9 of the Foreigners Act. There appears no scope to interfere into the findings of the learned Tribunal. Situated thus, the petition is devoid of merit and accordingly dismissed.

8. Resultantly, Superintendent of Police (B), Tezpur is hereby directed to take the petitioner into custody and take consequential action for her deportation to the Country of her origin i.e. Bangladesh. The Deputy Commissioner, Tezpur, will ensure the deletion of the name of the petitioner from the relevant voter list and other documents.

9. Send a copy of this order to the Secretary, Govt. Of India, Ministry of Home Affairs New Delhi, Commissioner Secretary to the Govt. Of Assam, Home Department, Dispur, Superintendent of Police, Tezpur, Deputy Commissioner, Morigaon, a copy of order be also furnished to the learned State counsel Mr. M. Bhagawati, for necessary follow up action.

10. Writ petition stands disposed of.