
(2019) 08 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 6407 Of 2016

Jahura Bibi

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Census Act, 1948 — Section 15
Evidence Act, 1872 — Section 1, 3
Foreigners Act, 1946 — Section 9
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 GAU CK 0019

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

Bench : Division Bench

Advocate : S Choudhury

Final Decision : Dismissed

Judgement

1) Heard Mr. H.R.A. Choudhury, learned senior counsel assisted by Mr. A. Matin and Mr. A. Ahmed, learned counsel for the petitioner, Mr. G. Hazarika, learned CGC appearing for respondent No.1 and Mr. J. Payeng, learned Govt. advocate representing respondents No.2 to 5.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner has challenged the opinion dated 14.09.2016 passed by the learned Foreigners Tribunal- 6th, Dhubri at Bilasipara in F.T. Case No. 6th Dhubri-267/2016 declaring her to be a foreigner entering into Assam after 25.03.1971.

3) The petitioner has projected one Alimuddin Sheikh as her father. In the written statement, she has relied on voters list of 1970 (Annexure-D), voters list of 1966 (Annexure-E), copy of extract of N.R.C. of 1951 (Annexure-F), and photocopy of image identity of NRC 1951 (Annexure-G). The said documents are also marked as Ext.D, Ext.E, Ext.F and Ext.G respectively. In her written statement, the petitioner has stated that her name had appeared in the voters list of 1997 (Annexure-A), 2010 (Annexure-B) as well as in her voter identity

card (Annexure-C), which was marked in her evidence as Ext.A, Ext.B and Ext.C respectively. She had also claimed in the written statement that her father's name appeared as Alek Uddin in NRC 1951 in Village- Thakuaralga, PS. Bilasipara, Dist. Goalpara, Assam, as Alem Uddin Sk in voters list of 1966 as resident of Village- Mayerchar Part-II, PS Bilasipara, District. Dhubri, Assam, and as Alep Uddin in voters list of 1970. Accordingly, it was claimed that the petitioner is the daughter of Alem Uddin Sk @ Alek Uddin Sk @ Alep Uddin Sk and the petitioner has relied on Gaon Panchayat Certificate dated 20.01.2016 (Annexure-J) to establish her linkage with her father as well as with her husband, namely, Hashem Ali, son of Late Adamali @ Adam Ali of Village- Hakama Part-V, PS Bilasipara, District-Dhubri, Assam. The petitioner had also relied on the affidavit sworn by one Miyachan Ali, wherein he claimed that he was the son of Alemuddin Sk and that Alem Uddin Sk @ Alek Uddin Sk @ Alep Uddin Sk were one and same person. The petitioner claimed that she lived in Village- Hakama Part-V and that she has another house at Village- Gopigaon Part-IV, where her name appeared in voter list as "D" voter on wrong enumeration which was not in her knowledge. A similar stand was taken by the petitioner in her evidence- on - affidavit that was sworn and filed on 04.02.2016.

4) The learned senior counsel for the petitioner has taken us through all the documents on record. Amongst other points taken in the writ petition, like availability of linkage, and adequate proof of citizenship, it was specifically submitted that except for columns No.1 to 4, 12 and 13, none of the other columns of the Verification Officer's Report was filled up and, as such, it is submitted that there was no preliminary investigation by the authorities and accordingly, there was no basis for the proceedings to be initiated against the petitioner.

5) From the available records it clearly transpires that the Electoral Registration Officer, 27 Bilasipara East LAC had submitted an application for making reference to the competent authority for suo motu local investigation and it was noted that the person could not produce any document in support of the claim of citizenship and such note is also contained in the Verification Officer's Report. Therefore, the omission to fill-up the other columns of the said report cannot be held to be fatal to the initiation of proceedings before the Foreigners Tribunal, as the petitioner has not suffered any perceivable prejudice because of the said omission because the request for reference by the Electoral Registration Officer contains the relevant information.

6) On a careful examination of the exhibits available in the LCR, it is seen that the Panchayat Certificate (Ext.J) is the only document linking the petitioner with Alem Uddin Sk @ Alek Uddin Sk @ Alep Uddin Sk. Although the contents of the said document does not disclose the basis upon which such certificate was issued, but the deficiency in the document is sought to be explained by one Faizul Hoque, Gaon Panchayat Secretary, Mayerchar, recorded on 19.02.2016, wherein he had stated that he had issued the link certificate in the name of

Jahura Bibi, daughter of Alim Uddin, a resident of Mayerchar Part-II, PS & District-Dhubri, Assam and further stated that the name of Jahura Bibi's father Alim Uddin is inserted in NRC 1951, voters list 1966 and voters list 1970 and he had also stated that based on the said documents, he had issued the certificate that Alepuddin Sekh, Alek Uddin Sekh, Alim Uddin Sheik is the same and one person. Notwithstanding that the learned tribunal had not discussed the evidence of the said witness, but the said evidence as well as Ext.J does not inspire the confidence of this Court as to its veracity, firstly, because upon perusal of the voters list of 1970 (Ext.D), voters list of 1966 (Ext.E), copy of extract of N.R.C. of 1951 (Ext.F), and photocopy of image identity of NRC 1951 (Ext.G), it is seen that there is no entry therein that Alepuddin Sekh, Alek Uddin Shek, Alim Uddin Sheik is the same and one person. Secondly, the petitioner had stated in her evidence- on - affidavit as well as in her written statement that her father's name appeared as Alek Uddin in NRC 1951 in Village-Thakuaralga, PS. Bilasipara, Dist. Goalpara, Assam, as Alem Uddin Sk in voters list of 1966 as resident of Village- Mayerchar Part-II, PS Bilasipara, District. Dhubri, Assam, and as Alep Uddin in voters list of 1970. Hence, as there is no evidence on record that Village-Thakuaralga was under Gaon Panchayat Mayerchar, the Link Certificate (Ext.J) would have no evidentiary value in so far it relates to NRC 1951. Thirdly, the hand writing in the printed dotted lines of the Gaon Panchayat Certificate (Ext.J) is filled up in black ink, but the nota bene appended to the said certificate is written in blue ink without any initials or signature. Fourthly, on the perusal of the Gaon Panchayat Certificate (Ext.J), we find that the State emblem of "Ashoka Pillar" is printed therein. This Court in the case of Diluwara Khatun Vs. Union of India, 2019 (1) GLT 382, after discussing the various provisions of the applicable Acts and Rules in respect of use of "State Emblem", has categorically held that any document or certificate issued by an authority using the State Emblem, who are otherwise not authorized to use the State Emblem under the Act and the Rules are inadmissible piece of evidence and therefore, no reliance can be placed on such document. We are bound to follow the said ratio in this case as the said Gaon Panchayat Certificate (Ext.J) contains State Emblem printed on the document and there is nothing to show that a Panchayat Secretary is authorized to use State Emblem. Fifthly, the said witness, i.e. Faizul Hoque has mentioned in his deposition that he was a resident of Village and P.S. Janglia, as such, he was a resident of the village of the father of the petitioner. Therefore, in light of the discussions above, the Gaon Panchayat Certificate (Ext.J) is held to be not admissible evidence and, as such, the linkage of the petitioner with Alepuddin Sekh, Alek Uddin Shek, Alim Uddin Sheik stands "not proved".

7) The NRC 1951 (Ext.A) was prepared during census operations conducted under Census Act, 1948 and that the provisions of Section 15 thereof specifically provides that the records of census is not open for inspection and nor it is admissible in evidence. This Court in the case of Borhan Ali @ Barhan Ali Vs. Union of India & Ors., (2018) 6 GLR 491: 2018 (4) GLT 392, has held as under:-

"16. Ext. B is a copy of National Register of Citizens (NRC), 1951 containing the

names of Hayat Ali, son of Kosi Kha; and Atakjan, wife of Hayat Ali. This copy of NRC, 1951 was issued by the President of Kamrup District Jamiat-E-Ulema-E-Hind on 31.01.1969.

16.1. This document is not admissible in evidence. NRC, 1951 was prepared on the basis of the Census Act, 1948. Section 15 of the Census Act says that record of census is neither open to inspection nor admissible in evidence.

16.2. In Bhanbhasa Sheikh Vs. Union of India, 1970 Assam LR 206, a Single Bench of this Court held that entry in NRC is not admissible in evidence. In that case also, similar certificate was issued by the Tezpur District Jamiat-E-Ulema-E-Hind.

16.3. As held in Bhanbhasa Sheikh (supra), this is a document issued by a private organization and is, therefore, not a public document. Therefore, such a document issued by a private organization and coupled with the prohibitory mandate of Section 15 of the Census Act, would be inadmissible in evidence. This position has been affirmed by a Division Bench of this Court in Abdul Majid Vs. Union of India, WP(C) No.6090/2016 decided on 15.03.2018."

8) The affidavit (Ext.H) sworn by Miyachan Ali to the effect that he is the son of Alepuddin Sk, Alek Uddin Sk, Alim Uddin Sk. The said document cannot be considered either as a piece of evidence or as a proof in light of Section 1 and 3 of the Evidence Act, 1872 as it is a self serving declaration by a third party to the proceeding. It is seen that there is no statement in the said affidavit to the effect that the petitioner is the daughter of Alepuddin Sk, Alek Uddin Sk, Alim Uddin Sk. Moreover, in the absence of any statement in the written statement filed by the petitioner that Miyachan Ali was the son of Alepuddin Sk, Alek Uddin Sk, Alim Uddin Sk, or that he was the brother of the petitioner, not only the said evidence is beyond pleading, but it carries no value as the contents of the said affidavit has not been proved by examining the author of such unsolicited declaration.

9) The deposition of Nurul Islam, authorised representative of the Election Officer, Bilasipara, merely discloses that the name of Alepuddin Seikh was entered in the voters list of 1970 and the name of Alimuuddin Seikh was entered in voters list of 1966, but the said deposition does not lead to a conclusion that the petitioner is his daughter.

10) Thus, we find that the petitioner has utterly failed to establish that she is the daughter of Alepuddin Sk, Alek Uddin Sk, Alim Uddin Sk. Her existence in the State of Assam can be traced from a period much after the cut-off date of 25.03.1971 having regard to the voters list reflecting her name, which were produced and exhibited before the tribunal.

11) The primary issue in a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not. Therefore, as the relevant facts are within the knowledge of the proceedee, notwithstanding anything contained in the Evidence

Act, 1872, the burden of proving citizenship absolutely rests upon the proceedee as per the provisions of Section 9 of the Foreigners Act, 1946. In the present case in hand, the petitioner has failed to discharge the burden and to prove that she is an offspring of parents of Indian origin.

12) In light of discussions above, this Court does not find that the impugned opinion rendered by the learned Tribunal is vitiated by any jurisdictional error or that there was any failure of giving opportunity of hearing to the petitioner. Therefore, as the Court is exercising supervisory jurisdiction and not appellate jurisdiction, no case is made out for substituting the opinion rendered by the learned tribunal with the view of the Court. This is not a case where the learned Tribunal had refused to admit admissible evidence or that its finding is dehors the evidence on record.

13) Hence, this writ petition fails and the same is dismissed, leaving the parties to bear their own cost.

14) A copy of this order may be made a part of the records of the learned Tribunal for future reference. The case records of the Tribunal be returned.