
(2019) 03 GAU CK 0051
In the Gauhati High Court
Case No : Writ Petition (C) No. 5877 Of 2018

Jaiful Begum

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0051

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : B Islam

Final Decision : Disposed Off

Judgement

AM Bujor Barua, J

1. Heard Mr. B Islam, learned counsel for the petitioner and Mr. J Payeng, learned Counsel appearing for the Foreigners' Tribunal and Border Affairs. Also heard Mr. AI Ali, learned counsel for the Election Commission of India as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.
2. On being referred by the Superintendent of Police (Border), Kamrup at Amingaon, RFT Case No.1182 R of 2016 was registered in the Foreigners Tribunal No.5, Kamrup (R), Assam.
3. Before the Tribunal, the petitioner submitted written statement taking the stand that her father is Jainal Abedin and is the son of Hazi Piyar Box and that their names appear in the voters lists of 1965 and 1971 of village Gargari, PS Ghograpar.
4. To establish the link with Jainal Abedin of 1965 and 1971 voters lists, the petitioner relies upon the deposition of the Gaonburah of village Gargari who has deposed as DW-2. The voters list of 1965 of village Gargari contains the name of Iyar Box, son of Sayed, aged 75 and Jaynal Abedin, son of Piyar, aged 30 years whereas the 1971 voters list contains the name of Haji Piyar Box, son of Sayed

Al, aged 80 years and Joynal Abedin, son of Haji Piyar Box, aged 35 years. The subsequent voters list of 1977 of village Gargari also contains the name of Hajipiyar Baks, son of Sayed, aged 86 years, Kadarjan Bibi, wife of Haji, aged 52 years and Jaynal Abedin, son of Hazi, aged 40 years. The voters list of 1985 of village Gargari also contains the name of Piyar Ali, Kadarjan Bibi and Jaynal Ali showing him to be son of Piyar Ali.

5. The petitioner also adduced the evidence of Rajen Boro, the Gaonbura of Gargari village as DW-3. In his deposition, the DW-3 had stated that he knows the petitioner Jaiful Begum, daughter of Jaynal Abedin and that she was a resident of village Gargari and subsequently, married to one Nur Islam of village Issapur village. In the cross-examination, the Gaonbura states that he maintains a register of Deaths and Births of the people living under his jurisdiction, but the said register does not contain the name of the petitioner. But at the same time, DW-3 also states that prior to him, his father Bhaben Boro was the Gaonburah of village Gargari and he is still alive.

6. If we go by the evidence adduced by DW-3, the Gaonburah, some indication is noticed that the petitioner is the daughter of Jaynal Abedin, whose name appears in the voters lists of 1965, 1971 , 1977 etc of Gargari village. But at the same time, as the Gaonburah had stated that he maintains a register of Deaths and Births and the name of the petitioner is not included in the said register, Mr. J Payeng, learned State Counsel also raises a question as to the acceptability of the deposition of the Gaonburah in his examination-in-chief.

7. In the aforesaid circumstance, we are in a situation where we can neither conclude that the petitioner had failed to discharge the burden that he is not a foreigner nor we can conclude that he had so discharged the burden so as to arrive at a conclusion that he is an Indian citizen.

8. In the circumstances, we deem it appropriate that the ends of justice will be met if the matter is remanded back to the Tribunal for further examination of DW-3, the Gaonburah as to his deposition that the petitioner is the daughter of Jaynal Abedin, whose name appears in the voters lists of 1965, 1971 , 1977 etc of village Gargari. As the father of the DW-3, who was earlier the Gaonburah is stated to be still alive, we are of the view that examination of the father of the DW-3 may throw some more light as to whether the petitioner is the daughter of Jaynal Abedin of the aforementioned voters lists.

9. Within the materials that is presently available on records, we are unable to differ with the conclusion arrived at by the Tribunal that the petitioner had failed to discharge the burden that he is an Indian Citizen. Accordingly, we do not interfere with the order dated 12.06.2018 in connection with RFT Case No.1182 R of 2016 by the Foreigners Tribunal No.5, Kamrup (R).

10. But at the same time, we have also taken note of that to a great extent, the Gaonburah has given an indication that the petitioner is the daughter of Jaynal Abedin, whose name appears in the voters lists of 1965, 1971 and 1977 of the

village Gargari except for the aspect that he had not recorded the name of the petitioner in the Birth and Death Register maintained by him. No information is available as to from which period the register is maintained, leading to a possibility that at the time when the petitioner was born, the procedure of maintaining the register may not have been in place.

11. For further clarification of the matter, we deem it appropriate that the petitioner be given an opportunity to re-examine DW-3, the Gaonburah and in doing so, the State shall also be at liberty to further cross-examine DW-3. In the event, the petitioner desires, she may also adduce the evidence of the earlier Gaonburah Bhaben Boro who is still alive as his evidence may lead to a conclusion that Jaynal Abedin of the village Gargari of the aforementioned voters lists is the father of the petitioner.

12. It is stated that the petitioner is in detention camp at Kokrajhar.

13. Although, we do not interfere with the order of the Tribunal dated 12.06.2018, but because of the possibility that the petitioner may have established a link with Joynal Abedin of the 1965, 1971 and 1977 voters lists of Gargari village, the petitioner be released forthwith subject to a submission of two surety bonds from two prominent persons who give the surety subject to the satisfaction of the Superintendent of Police (Border) Kamrup (Rural) who shall verify and satisfy himself as to the authenticity and acceptability of the two sureties to his satisfaction.

14. The petitioner shall appear before the Tribunal on 10.04.2019 for re-examination of the DW-3, the Gaonburah as well as for adducing the evidence of the earlier Gaonburah, Bhaben Boro. Upon such re-examination, the Tribunal shall pass a reasoned order as to its conclusion as to whether the petitioner is a citizen of India or not and any such opinion that may be formed shall prevail over and supersede the earlier order dated 12.06.2018. If the opinion formed by the Tribunal is against the petitioner, further reason given shall be construed to be additional reasons justifying the earlier order dated 12.06.2018.

15. Writ petition stands disposed of in the manner indicated above.

16. Send back the LCR.