

(2025) 08 GAU CK 0334
In the Gauhati High Court
Case No : WP(C) Of 488 Of 2023

Musstt Bhanu Nessa@Bhanu Nessa

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 07-08-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2025) 08 GAU CK 0334

Hon'ble Judges : Kalyan Rai Surana, J;Rajesh Mazumdar, J

Bench : Division Bench

Advocate : S Hoque, M Deka, F A Farooque

Final Decision : Dismissed

Judgement

Rajesh Mazumdar, J

1. Heard Mr. S. Hoque, learned counsel appearing for the petitioner. Also heard Mr. P.S. Bhattachayya, learned CGC; Mr. M. Islam, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel, ECI, Mr. G. Sarma, learned standing counsel for the FT matters and NRC and Mr. P. Sarma, learned Govt. Advocate for the respondents.

2. The present writ petition under Article 226 of the Constitution of India has been preferred by the writ petitioner assailing the opinion dated 24-05-2022 rendered in BNGN/FT-2/APR/612/2017 in connection with BNGN IM(D)T No. 218/2003 and BNGN/FT-2/APR/34/2020 in connection with BNGN IM(D)T No. 892/2002. The two cases before the learned Tribunal had originated from two separate references made by the Superintendent of Police (Border), Bongaigaon. The two references were then transferred to the FT, Bongaigaon No. 2, Abhayapuri in connection with provisions of Foreigners Tribunal Act, 1946 read with Foreigners Tribunal Orders, 1964. Both the references were amalgamated for a combined proceeding. The writ petitioner received notices to appear before the Tribunal. Accordingly, she appeared and filed her written statement claiming

herself to be an Indian citizen by birth. Two witnesses, viz. the writ petitioner herself as DW-1 and one Abdul Barek who claimed to be the brother of the petitioner had adduced evidence in support of the petitioner. OP as DW-1 exhibited the following documents in support of her version:

- "a. Final Khatian – Exhibit- 1
- b. Voter list of 1966 – Exhibit- 2
- c. Voter list of 1970 – Exhibit- 3
- d. Voter list of 1985 – Exhibit- 4
- e. Voter list of 1997 – Exhibit – 5
- f. Voter list of 2008 – Exhibit- 6
- g. Gaon Panchayat Certificate – Exhibit- 7"

DW-2 Abdul Barek submitted following documents along with his affidavit in support of his OP:

- "h. Voter list of 1997 – Exhibit- A
- i. Voter list of 2008 – Exhibit- B
- j. Elector Photo Identity Card – Exhibit- C"

3. Having appreciated the contention raised in the written statement and the evidence adduced on behalf of the writ petitioner, the learned Tribunal came to a conclusion that none of the exhibits relied upon by the petitioner could establish her linkage to her alleged parents. The Gaon Panchayat certificate issued by the Secretary, 56 No. Bonghugi Gaon Panchayat was found to be inadmissible as the author was not examined to prove the certificate or the contents thereof. The Tribunal also found that the documents exhibited by the second witness in favour of the petitioner did not serve to prove linkage of the petitioner and the witness or between the petitioner and her alleged parents. The learned Tribunal thereafter proceeded to answer the reference case in the affirmative and in favour of the State holding the petitioner to be a foreign national who entered India from Bangladesh illegally and without authority subsequent to 25-03-1971. It is this opinion dated 24-05-2022 of the FT, Bongaigaon No. 2, Abhayapuri which is under challenge.

4. We have heard the learned counsel for the parties and perused the trial court records. The learned counsel for the petitioner strenuously argued that the petitioner is the daughter of Hatem Ali and Jaher Nessa who were both citizen of India by birth and permanent resident of village- Simalabari in the erstwhile Goalpara district. He has drawn our attention to the Voters List of 1966 and 1970 to stress that the names of the parents of the petitioner were found in the Voters List of 1966 along with her brother and the names of her grandparents were recorded in the Voters List of 1970, in both cases along with her brother Habibor.

The learned counsel has also drawn our attention to the Electoral Roll of 1977 wherefrom it has been sought to be projected that the name of the petitioner appears at Sl. Nos. 267 and 268, H/No. 65 along with her husband at village-Sontoshpur Part-III, P.S. Abhayapuri under 35 No. Abhayapuri South (SC) LAC in the Bongaigaon district. The learned counsel has stressed that the petitioner had been regularly casting her votes from 1985 till 2008 and it was thereafter in the year 2010 that her name appeared marked as a "D-Voter" in the Voters List of 2010. He also drew our attention to the certificate issued by the Secretary of 56 No. Bonghugi Gaon Panchayat to emphasize that it showed a link of the petitioner to Hatem Ali who she projects as her father. The learned counsel, therefore, submits that keeping in view of the statements made in the written statement filed before the Tribunal and in view of the evidence led by the petitioner and her brother, the opinion rendered by the learned Member of the Tribunal was palpably wrong and deserves interference by this Court.

5. Mr. G. Sarma, learned standing counsel, FT matters, on the other hand, has submitted that none of the documents relied upon by the petitioner either during the proceeding in the Tribunal or annexed to the writ petition suffice to establish any link between the petitioner and her alleged parents. Mr. Sarma has also drawn our attention to the fact that while the certificate, allegedly issued by the Secretary, 56 No. Bonghugi Gaon, describes the village of the petitioner as Bonghugi, a perusal of the affidavit filed by the alleged brother of the petitioner would show that he claimed to be a permanent resident of village- Aparupi, P.O. Kalgachia. The learned counsel, therefore, submitted that since each of the documents relied upon by the petitioner had received due consideration of the learned Tribunal, there is no error in the opinion rendered by the Tribunal and therefore, no interference is called for in this writ petition.

6. We have perused the trial court records and have also considered the submissions made by the learned counsel appearing for both the parties. In the written statement filed on 06-11-2017 on behalf of the writ petitioner/proceedee, at paragraph 9, it was asserted that she got married with Hazrat Ali, Son of Hasen Ali on 12-07-1981. Therefore, it would be around 36 years of marriage of the petitioner. However, in her cross-examination on 17-09-2019 before the Tribunal she stated that she had completed 21 years of marriage. Unfortunately, during her cross-examination she has failed to support alleged date of marriage as stated in the written statement and affidavit.

7. She has also stated that she did not know in which year she was born. Contrast to the above, the same proceedee has declared her own age to be 55 years in the verification to the written statement.

8. The proceedee did not introduce the DW-2 in her written statement or the evidence on affidavit and therefore, the evidence of DW-2 may not require much further consideration. However, even the DW-2 has asserted that the proceedee got married in the year 1981, in contrast to the claim of the proceedee that she had completed 21 years of marriage in 2019.

9. It is not the case of the petitioner that she did not understand the contents of the written statement, affidavit or that she suffered any prejudice during cross-examination and therefore, the blatant discrepancy in her evidence-in-chief and the cross-examination demolishes her assertion regarding her citizenship status.

10. The Voter List relied upon by both the DWs for the year 1985, 1997 and 2008 are not relevant to establish the linkage of the petitioner to her alleged parents. We have also noticed that while the certificate issued by the Gaon Panchayat Secretary declares her to be a resident of Bonghugi village who was married to a resident of Sontoshpur village, the alleged brother of the proceedee in his affidavit had asserted that he is a permanent resident of Aparupi and does not explain as to how he and the proceedee would have different addresses when the alleged parents remained the same.

11. The certificate issued by the Secretary of 56 No. Bonghugi Gaon Panchayat was not proved by adducing witnesses of the Secretary aforesaid. We also noticed the irony that though the certificate proclaims that the proceedee got married on 12-07-1981 and the DW2 also endorses the said date, the proceedee herself could not state the date during cross-examination, and even the timeframe which she had stated was in much variance with the dates projected by the certificate and by the DW2. We have seen that the learned Tribunal had taken into consideration all the documents annexed and had appreciated evidence led by both the DWs and therefore, it is not a case where relevant evidence adduced by the proceedee on her behalf had been ignored while coming to the conclusion that she was not able to substantiate her assertion that she was a citizen of India by birth.

12. In view of the above, we do not find any reason to differ with the opinion rendered by the learned Tribunal and also do not find any illegality in the opinion rendered.

13. The writ petition must, consequently, fail and accordingly stands dismissed. The consequence of the dismissal shall follow.

The Registry shall send back the Tribunal's record along with a true copy of this order to be made a part of the record.