

(2023) 12 GAU CK 0026
In the Gauhati High Court

Case No : Writ Petition (Civil) No. 1070 Of 2017

Musstt. Naima Begum.

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 20-12-2023

Acts Referred:

Citizenship Act, 1955 — Section 6A(1)(d)
Evidence Act, 1872 — Section 106
Foreigners? Act, 1946 — Section 9

Citation : (2023) 12 GAU CK 0026

Hon'ble Judges : Manash Ranjan Pathak, J;Mitali Thakuria, J

Bench : Division Bench

Advocate : Md. Giash Uddin, H.I.Choudhury, M. Buragohain, C. S. Baruah, J. Payeng, R. P. Sharma

Final Decision : Disposed Of

Judgement

1. Heard Md. Gias Uddin, learned counsel for the petitioner and Mr. C. S. Baruah, learned CGC for the respondent No. 1. Also heard Mr. J. Payeng, learned Standing counsel, Home Department Assam for the respondents Nos. 2, 4 & 5 as well as Mr. P. Sharma, learned Additional Senior Government Advocate Assam for the respondent No. 3.

2. Pursuant to a reference made by the Superintendent of Police (Border), Nagaon vide IM(D)T Case No. 1218/2004, initially a case being No. FT/H/2020/2012 was registered against the petitioner, namely, Musstt. Naima Begum, before the Foreigners' Tribunal, Hojai where notice of the case was issued to her on 13.12.2012. On receipt of notice of the case the petitioner on 18.04.2015 submitted her written statement in said Case No. FT/H/2020/2012 along with some Photostat copies to prove her nationality. On 23.07.2015, the petitioner submitted her evidence in chief along with certain documents in support of her Indian nationality.

3. As the matter relates to Jamunamukh Police Station, therefore, on 20.08.2015

the said Case No. FT/H/2020/2012 was transferred to the Foreigners' Tribunal, No. 10th at Sankardev Nagar, Hojai, wherein, the same was reregistered as F.T (D) Case No. 134/2015. The said Foreigners' Tribunal No.10th again issued a fresh notice to the petitioner, pursuant to which she appeared before the said Tribunal on 16.09.2015 and she was duly cross-examined by the State. After hearing the arguments put forwarded by the learned counsels for both the sides and on considering the evidence adduced by the petitioner, learned Foreigners' Tribunal Nagaon, No.10th at Sankardev Nagar, Hojai by the impugned judgment dated 31.10.2016 opined the petitioner to be a foreigner under the Foreigners' Act, 1946, who had illegally entered into the territory of India (Assam) on or after 25.03.1971.

4. Being dissatisfied with said judgment dated 31.10.2016 passed by the Foreigners' Tribunal Nagaon Court No.10th Hojai at Sankardev Nagar in F.T (D) Case No. 134/2015, the petitioner has filed this writ petition on 20.02.2017.

5. It is the contention of the petitioner that she is an Indian citizen by birth and a permanent resident of Village-Bherbari, P.S. - Jamunamukh of District-Nagaon, Assam. It is contended by the petitioner that the name of her father is Abdul Jalil and she got married with one Md. Abdul Hoque, who is a resident of Village-Bherbari, P.S. - Jamunamukh, District of Nagaon, Assam. In support of her case, the petitioner exhibited the certified copies of Voters Lists of 1966 and 1971 as Exhibits - 1 & 2, respectively, pertaining to Jamunamukh Legislative Assembly Constituency where the name of her grandfather is recorded. She further exhibited the Exhibits - 3 & 4, the certified copies of the Voters Lists of 2005 and 2014, respectively, that are also of Jamunamukh Legislative Assembly Constituency, where her own name is recorded along with her husband after her marriage. She also exhibited the certificate of residency issued by the Government Gaonburah (headman) of Village-Charlock/Jogijan from her paternal village as Exhibit-5. It is stated by the petitioner that the learned Member, Foreigners Tribunal Nagaon No. 10th at Sankardev Nagar Hojai, Assam, did not scrutinize the exhibited documents properly and arrived at a wrong conclusion declaring her as a foreigner of post 1971 stream. It is further contended that the petitioner produced all the documents and link certificate, where name of her grandfather was recorded in the Voters Lists of 1966 and 1971, but the learned Tribunal did not consider those documents and without scrutinizing the documents properly and without considering the evidence on record, passed the impugned judgment dated 31.10.2016 arbitrarily declaring her as foreigner. Therefore, petitioner prayed for setting aside the said impugned judgment/opinion dated 31.10.2016 passed by the learned Member, Foreigners Tribunal No. 10th at Sankardev Nagar Hojai, Assam, in FT(D) Case No. 134/2015, corresponding to SP's IM(D)T Case No. 1218/2004.

6. The learned counsel for the petitioner, Md. G. Uddin, further submitted that the petitioner not only produced the Voter Lists of the years 1966 and 1971, wherein, the name of her grandfather and father are recorded, but also produced

the subsequent Voters Lists where her own name appeared along with her husband. Further, she also produced the certificate of Gaonburah as a link document, wherein, name of her father- Abdul Jalil is reflected in the said certificate. But the learned Tribunal did not consider all these aspects of the case and passed the order without proper appreciation of evidence as well as exhibits which the petitioner filed in support of her case.

7. In this context, Mr. J. Payeng, learned Standing Counsel, Home Department, submitted that the only link document relied by the petitioner is the certificate of the Gaonburah and she did not exhibit the Kabin-Nama (Nikah-Nama) or other certificate of Panchayat. Though the petitioner produced the certificate of Gaonburah to establish her linkage with her projected father and grandfather, whose name appeared in the Voters Lists of 1966 and 1971, but she failed to examine the issuing authority or the Gaonburah as the witness in support of her plea or to prove the contents of the certificate.

8. Mr. Payeng further relied on a decision of the co-ordinate Bench of this Court, passed in WP(C) No. 3807/2016, disposed of on 08.06.2018, wherein, it has been held that the proof of a document is one thing and proof of contents is another. The documents cannot be proved by only exhibiting the same but the contents are also to be proved. He, accordingly, gave emphasis on paragraph No. 19 of the said judgment, wherein it has been held as under:

"19. It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. In so far Ext-F document vis-a-vis the petitioner is concerned, Nimai Miah was a resident of Kukarpar village. Petitioner after her marriage with Saijuddin had left the said village and started residing at village Hirajani under Hajo Police Station. When the petitioner got married and since when she had been residing at village – Hirajani has not come on evidence. When the petitioner was not a resident of village – Kukarpar on the date when the Gaonburah had issued the certificate, Gaonburah could have issued the certificate only on the basis of the record maintained in his office. We also do not know what happened to Nimai Miah after his name appeared in one of the documents i.e., voters list of 1965 (ExtC). Nimai Miah was 30 years of age in 1965 and in the ordinary course, he would have been around much beyond 25.03.1971. From the voters list of 1997 (Ext-A), we find that Ramila Bibi was 20 years of age. This is the first time the age of the petitioner has come on record. If Ramila Bibi was 20 years of age in 1997, she would have born in the year 1977, which means that her father ought to have been alive atleast till 1976. Therefore, on the basis of the testimony of Md. Ramesh Ali, as discussed above, it cannot be said that Ext-F was proved.

Besides, there is unauthorised use of the State Emblem of India by the Gaoburah which has rendered Ext-F inadmissible in evidence. Under the State Emblem of India (Regulation of Use) Rules, 2007, Gaon Burah is not authorized to use the State Emblem of India in any manner. If Ext-F is excluded from consideration, there is nothing on record to establish that Ramila Bibi or Ramila Khatun was the daughter of Nimai Miah of Ext-C (1965)."

9. Mr. Payeng, Standing Counsel, Home Department further submitted that in the instant case also, the petitioner though exhibited the certificate of the Gaonburah as Exhibit-5, but she failed to examine the Gaonburah, who issued the certificate and it is also not clear from the certificate of the Gaonburah as to whether he know the petitioner from her childhood or since her birth. It seems that he issued the certificate only on the basis of information provided to him and he has no personal knowledge in regards to the birth of the petitioner. Mr. Payeng further submitted that in the aforesaid judgment, it is also observed by the Court that the Gaonburah can issue the certificate only on the basis of the record maintained in his office. But, here in the instant case, it is seen that there is no record produced by the petitioner on the basis of which the Gaonburah issued the certificate. In this context, he also relied on a decision of the Hon'ble Apex Court, reported in (2010) 4 SCC 491 (Life Insurance Corporation of India and Anr. Vs. Ram Pal Singh Bisen), wherein the Hon'ble Apex Court laid down that admission of a document in a Court may amount to admission of its contents but not their truth.

10. Accordingly, Mr. Payeng has submitted that the petitioner failed to prove any linkage with her projected father or grandfather only on the basis of the certificate of Gaonburah, which she could not prove as required under the Evidence Act. It is also submitted by him that the petitioner failed to examine the issuing authority or the Gaonburah to prove the contents of the Exhibit-5 and she merely exhibited the same only as a link document without proving its contents and thus, it cannot be considered as a link document to prove any link of the petitioner with her projected father or projected grandfather, whose names claimed to have appeared in the Voters Lists of 1966 and 1971, Exhibits - 1&2.

11. Mr. Payeng further relied on another decision of the Hon'ble Supreme Court passed in the case of Sarbananda Sonowal vs. Union of India & Anr., reported in (2005) 5 SCC 665, and emphasized on paragraph No. 26 of the said judgment, which reads as follows:

"26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of (i) his date of birth (ii) place of birth (iii) name of his parents (iv) their place of birth and citizenship. Some times the place of birth of his grand parents may also be relevant like under Section 6-A(1)(d) of the Citizenship Act. All these facts would necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the

State authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

12. Therefore, Mr. Payeng, learned Standing Counsel, Home Department, has submitted that the petitioner failed to establish any link with her projected father and projected grandfather and also could not produce any document to establish herself to be an Indian Citizen and accordingly failed to discharge her burden under Section 9 of the Foreigners’ Act, 1946.

13. We have perused the case records as well as the exhibited documents supported by the petitioner and also heard the submissions made by the learned counsels for both sides.

14. It is the case of the petitioner that she is the daughter of one Abdul Jalil and granddaughter of one Sikanddar Ali, whose names appeared in the Voter Lists of 1966 and 1971 from Village-Jogijan of Jamunamukh LAC. Though her name is not reflected in any Voter Lists along with her parents, but after her marriage, her name regularly appeared in the Voters Lists along with her spouse. Accordingly, she also exhibited certified copies of the Voters Lists of 2005 and 2014 from Village-Bherbheri of Jamunamukh LAC, as Exhibits - 3 & 4, wherein, her name appeared along with her husband. However the only link document she relied on is the Exhibit-5, i.e., the certificate of Government Gaonburah of Village-Charlock/Jogijan issued in her favour, wherein, it is reflected that she is the daughter of Abdul Jalil and got married with one Abdul Hoque of Bherbheri village. But she failed to produce the Gaonburah as her witness, who is the issuing authority of the said certificate and thus, she failed to prove the contents of the said exhibit, though the said certificate of Gaonburah is exhibited as Exhibit-5. More so, there are no other supporting documents to prove that the said Gaonburah had any personal knowledge about her or he gave the certificate on the basis of any record maintained in his office or after due verifications of records maintained in that regard. Apart from the certificate of Gaonburah, there is no other link document to prove herself to be the daughter of one Abdul Jalil, whose name is claimed to have appeared in the Voters List of 1971.

15. The petitioner/proceedee also filed a certificate issued by the Secretary, Charlock Gaon Panchayat and another Identity Certificate that are annexed as Annexures - 11 and 12 to this writ petition, to show that she is the daughter of one Md. Abdul Jalil and got married with one Md. Abdul Hoque, but those were not exhibited by her before the concerned Foreigners’ Tribunal.

16. Though the petitioner as DW-1 in her cross-examination stated that the name of her mother is one Meherjan Bibi, but she did not utter the name of

Mazida Khatun, whose name appeared in the certificate issued by Panchayat (Annexure-11) as her mother. We have also noticed that the petitioner did not mention the name of her mother in the written statement filed in the case.

17. The Hon'ble Supreme Court in the case of Rupajan Begum vs. Union of India & Ors., reported in (2018) 1 SCC 578, in paragraph Nos. 16 & 18 thereof, has held as under:

"16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.

18. For all the aforesaid reasons we set aside the order of the High Court insofar as the invalidity of the certificate issued by the G.P. Secretary is concerned and allow the present appeals to the above limited extent. We make it clear that the certificates issued by the G.P. Secretary/Executive Magistrate will however be acted upon only to establish a linkage between the holder of such certificate and the person(s) from whom legacy is being claimed. The certificate will be put to such limited use only if the contents of the certificate are found to be established on due and proper enquiry and verification."

18. So, from the entire discussions made above, we have seen that the projected father or projected grandfather of the petitioner, namely Abdul Jalil and Sikanddar Ali, respectively may be Indian citizen, but the petitioner/proceedee failed to establish herself to be the daughter and granddaughter of said Abdul Jalil and Sikanddar Ali, respectively. The only link document, i.e. the certificate of Gaonburah, Exhibit-5 also could not be proved by the proceedee as required under the Evidence Act and thus, she failed to discharge her burden as required under Section 9 of the Foreigners' Act, 1946. The learned Member, Foreigners Tribunal has also discussed in detail about the contradictory ages of the petitioner's father and grandfather in his opinion/order.

19. The learned Member, Foreigners' Tribunal, Nagaon Court No. 10th at Sankardev Nagar Hojai, Assam, in paragraph No. 3 of its opinion, has discussed

as under:

"...Exts.-1 & 2 are the certified copies of the Voters lists of 1966 and 1971 respectively, wherein, as per the OP/DW-1, the name of her grandfather namely, Sikanda is recorded as a resident of village: Jugijan under Jamunamukh P.S. in respect of 92 No. Jamunamukh LAC (Ext.-1).

As stated by the OP/DW-1 in her further cross she has disclosed that her present age is 37 years and while she was tiny, her grandmother had expired. If it is so then, the probable year of birth of the OP/DW-1 would be sometime in the year of 1978 and from that point of view atleast upto the year of 1971 the grandmother of the OP was alive yet, her name is not enlisted either in Ext.-1 or in Ext.-2.

That apart, as stated by the OP/DW-1 in her further cross her father namely, Md. Abdul Jalil who is running presently in the age of 83 years is surviving even as on today. In the year of 1966 the age of the OP's father ought to have 34 years, as his probable year of birth would be sometime in the year of 1932 (as he is 83 years of age in 2015) but his name is not recorded in the Voters list of 1966 (Ext.-1) or in 1971 (Ext.-2) although, he was 34 and 39 years of age at the relevant times. Even the OP's mother is also surviving presently running at the age of 70 years as disclosed by the OP in her further cross. If it is true then the probable year of birth of the OP's mother would be sometime in the year of 1945 and as such, she had attained the age of 21 years in the year of 1966 and 26 years of age in 1971 (Exts 1 and 2 respectively) but neither in Ext.-1 nor in Ext.-2 the OP's mother name is recorded rendering the Exts 1 and 2 to be most unreliable and untrustworthy in support of the OP's claim."

20. Thus, it is seen that the proceedee could not produce any document to prove her linkage with her projected father or projected grandfather nor could produce any document or Voter List showing her name along with her projected father. There is no evidence that she is the granddaughter or daughter of the person whose names have been reflected in the Voters Lists of 1966 and 1971, respectively, whom she projected as her father and grandfather. We found that there is no other document to establish herself to be an Indian citizen and accordingly, she failed to discharge her burden under Section 9 of the Foreigners' Act, 1946 to prove herself to be the Indian citizen.

21. In view of above, we find that the learned Member, Foreigners' Tribunal, No. 10th at Sankardev Nagar, Hojai, Assam, has correctly appreciated the entire facts and evidence of the case and arrived at a correct and just decision holding the petitioner to be a foreigner of post 1971 stream. Accordingly, we find that there is no perversity or any illegality in the impugned judgment/ opinion dated 31.10.2016, passed by the learned Member, Foreigners' Tribunal, No. 10th at Sankardev Nagar, Hojai, Assam in F.T (D) Case No. 134/2015, corresponding to SP's IM(D)T Case No. 1218/2004 requiring any interference with it. Therefore, the present writ petition, being devoid of merit, stands dismissed.

22. The interim order passed earlier in this proceeding on 27.02.2017 stands vacated/hereby recalled.

23. Registry shall return the records of F.T. (D) Case No. 134/2015 to the Foreigners' Tribunal, No. 10th at Sankardev Nagar, Hojai, Assam forthwith along with a copy of this order.

24. Registry shall also forward copies of this order to the Superintendant of Police (Border) of District Nagaon as well as the District of Hojai forthwith for their information.

25. In terms of above, this writ petition stands disposed of.