

(2023) 05 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7196 Of 2017

Musstt. Phuljan Nessa

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2023) 05 GAU CK 0049

Hon'ble Judges : Achintya Malla Bujor Barua, J; Robin Phukan, J

Bench : Division Bench

Advocate : B C Das

Final Decision : Disposed Of

Judgement

AM Bujor Barua, J

1. Heard Mr. BC Das, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Nagaon as well as the Officer-in-Charge of Samaguri Police Station, Nagaon and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Nagaon.

2. The petitioner, namely, Musstt. Phuljan Nessa was referred to the Foreigners Tribunal (2nd) Nagaon for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T. Case No.146/2016 corresponding to S.P.Ref. F.T.Case No.224/16 wherein an opinion dated 25.10.2017 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the Tribunal, amongst others, the petitioner exhibited a certified copy of the voters list of 1965 of village Kanchanpur under P.S. Rupahihat in the Nagaon district which contains the name of Aktar Ali, son of Abir at Sl.No.228 as well as the voters list of 1970 also of village Kanchanpur which again contains the name of Akhtar Ali son of Abir at Sl.No.217.

5. Before the Tribunal, the petitioner as DW-1 had deposed that she is the daughter of Akhtar Ali of the voters list of 1965 and 1970 respectively of village Kanchanpur and she was married to Innus Ali of village Kanchanpur and thereafter shifted to village Hatipukhuri under Rupahihat Police Station in the Nagaon district and then to No.1 Garumara under Samaguri Police Station where she is presently residing.

6. The Tribunal in its order dated 25.10.2017 had taken note of the voters list of 1965 and 1970 of village Kanchanpur containing the name of Akhtar Ali son of Abir as well as the affidavit of the petitioner stating that she is the daughter of Akhtar Ali of village Kanchanpur. But the Tribunal deemed it appropriate that an affidavit cannot be treated as evidence and also took note of its notice that was issued to the petitioner/proceedee Phuljan Nessa which contains the information that the name of her father is Akbar Ali and accordingly arrived at its conclusion that the petitioner is the daughter of Akbar Ali and not Akhtar Ali as she claims. The entire approach of the Tribunal is disturbing. If the petitioner has discharged the burden that she is the daughter of Akhtar Ali by producing certain voters list and the Tribunal had issued a notice to Phuljan Nessa daughter of Akbar, it cannot mean that the petitioner had failed to discharge the burden of proving her citizenship. Musstt. Phulkan Nessa daughter of Akhtar Ali of the 1965 and 1970 voters list of village Kanchanpur can never under any circumstance prove that she is the daughter of Akbar Ali, merely because the Tribunal deemed it appropriate to issue the notice to Musstt. Phuljan Nessa daughter of Akbar Ali. It was the inherent duty of the Tribunal to introspect and look upon itself as to whom the notice was issued and as to who is the person before the Tribunal. If the notice was intended to Phuljan Nessa daughter of Akbar Ali, but it was served upon Phuljan Nessa daughter of Akhtar Ali and the Phuljan Nessa daughter of Akhtar Ali is before the Tribunal, it was the duty of the Tribunal to discharge Phuljan Nessa daughter of Akhtar Ali from the proceeding and issue notice upon the correct person namely Phuljan Nessa daughter of Akbar Ali. The aforesaid inconsistent and dichotomic view of the Tribunal has to be deprecated. But the unfortunate aspect is that this kind of situations are being repeatedly noticed by this Court.

7. The Tribunals are strictly directed not to proceed any further with any person in a circumstance when the notice is issued in the name of one person, but served on another person and compel that other person to prove that he/she is the citizen by providing document of the person in whose name the notice is issued. In other words, the Tribunals are requiring these persons to do an impossibility which can never be discharged.

8. In course of the writ proceeding, Mr. BC Das, learned counsel for the petitioner has fairly stated that he had interacted with the writ petitioner and from the writ petitioner it could be found out that she is also a voter of 1971 of village Kanchanpur, where her name appears as Fuljan Bibi wife of Innus at Sl.No.1178 and that the petitioner is Fuljan Bibi wife of Innus of the 1971 voters list of village Kanchanpur.

9. Mr. BC Das, learned counsel for the petitioner upon interaction with the writ petitioner could also find out that there exists a sale deed dated 01.10.1980 by which, amongst others, Phuljan Bibi wife of Innus Ali and daughter of Akhtar Ali had purchased certain land. The petitioner seeks to rely upon the said sale deed to substantiate that she is also the daughter of Akhtar Ali of village Kanchanpur. We appreciate the efforts made by Mr. BC Das, learned counsel for the petitioner that he had given the extra effort to interact with the petitioner to find out as to what favourable documents may be available with the petitioner. If the petitioner is Phuljan Bibi wife of Innus of 1971 voters list of village Kanchanpur, the burden has been discharged there itself that she is a citizen of India. We do not understand as to why the lawyer representing the petitioner/proceedee in the Tribunal could not have made that extra effort to find out as to what further documents may be available.

10. In view of the above, the matter stands remanded back to the Tribunal to allow the petitioner to rely upon the voters list of 1971 of village Kanchanpur containing the name of Fuljan Bibi wife of Innus at Sl.No.1178 to claim that she herself is the person and therefore, discharged the burden under Section 9 of the Foreigners Act, 1946. The respondents in the Home Department may also make their own verification as to whether Fuljan Bibi wife of Innus at Sl.No.1178 of the 1971 voters list of village Kanchanpur is the writ petitioner/proceedee herself or they are two different persons and accordingly submit a report before the Tribunal.

11. Accordingly, the petitioner shall appear before the Tribunal on 07.07.2023.

12. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 25.10.2017 of the Foreigners Tribunal (2nd) Nagaon in F.T. Case No.146/2016 corresponding to S.P.Ref. F.T.Case No.224/16 and if it is against the petitioner, consequential action under the law shall follow.

13. Till the reasoned order is passed, no coercive action be taken against the petitioner.

14. Writ petition stands disposed of in the above terms.

15. Send back the LCR.

16. A copy of this order be furnished to Ms. A Verma learned counsel for the Home Department, Government of Assam for doing the needful.