
(2019) 03 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition (C) No. 3651 Of 2016

Rahela Bibi

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0009

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

Bench : Division Bench

Advocate : M Ali

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. MU Mahmud, learned counsel for the petitioner and Mr. J Payeng, learned counsel appearing for the Foreigners' Tribunal and Border Areas. 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), Dhubri, a reference under the IM(D) Act, 1983, was made. Subsequently, on the IM(D)T Act of 1983 being declared ultra vires, the reference was transferred to the Foreigners Tribunal, Dhubri and was re- numbered as FT Case No. 4325/GKJ/II. Subsequently, it was again transferred to the Foreigners Tribunal No.10, Dhubri and was further re-numbered as Case No.FT (10)/TMH/34/2015.

3. Before the Tribunal, the petitioner submitted her written statement wherein a stand was taken that the petitioner is the daughter of Akkel Ali and prior to her marriage with Ali Akbar, she was residing at her parental house at village-Failaguri in the Gossaigaon Sub-Division of Kokrajhar District. A further stand was taken that the Head Teacher of the school where she studied had issued a certificate and further, the Chairman of Babubil VDC had also issued a

certificate that the petitioner is known to him. A stand was also taken that the name of the father of the petitioner appeared in the voters list of 1960 of village Madarer Char Kashem Mondoler Gram of South Salmara Sub-Division and subsequently, the father of the petitioner had shifted to village -Failaguri under Gossaigaon Sub-Division and his name was included in the voters list of 1971 of Failaguri village.

4. In the written statement, the petitioner also took the stand that the President of Kumargaon Gaon Panchayat had given a certificate that she is the daughter of Akkel Ali of village Uzan Petla. The voters list of 1960 of village Madarer Char Kashem Mondoler Gram contains the name of Akkel Ali Sk, son of Bilat Ali, aged 37 years and Ajgor Ali Sk also son of Bilat Ali, aged 28 years. The voters list of 1971 of village Failaguri contains the name of Akkel Ali. Although the petitioner had exhibited a certificate from the school authorities, Village Council Development Committee (VCDC) of No.2, Guma Un-reserved Constituency as well as from the President, Kumarganj Gaon Panchayat but the persons who had issued the concerned certificates had not been examined.

5. According to the petitioner, she can establish her link with Akkel Ali Sk of the 1960 voters list of Madarer Char Kashem Mondoler Gram and of the voters list of 1971 of village- Failaguri through the aforementioned certificates. As already held by this Court, a school certificate is not a public document and therefore not only the contents thereof, but even the contents of the records from which such certificates are issued are also required to be proved in evidence.

6. The certificate issued by the VCDC is stated to be a certificate in the nature of a certificate issued by the Gaonburah in the other non-BTC areas. But be that as it may, the certificate issued by the VCDC as well as the Certificate issued by the President, Kumargaon Gaon Panchayat under the law laid down by the Supreme Court as well as this Court in various other pronouncements, the contents thereof has to be proved by examining the concerned persons who had issued the certificates.

7. In the instant case, from the records we find that the persons who had issued the VCDC Certificate as well as the Gaon Panchayat Certificate were not examined.

8. Mr. MU Mahmud, learned counsel for the petitioner contends that although under the law, persons issuing the certificates are required to be examined but because of the ground realities prevailing, the petitioner was ill-advised in not examining the concerned persons. A further contention is raised that the concerned persons being public officials having issued the Certificates, the petitioner also has a right to examine the persons who had issued the certificate in order to authenticate the certificates as well as to prove the contents thereof.

9. Without expressing any view on the merit of the contention of Mr. MU Mahmud, we are of the view that in the fact and circumstance of the present case, interest of justice will be met if the petitioner is allowed to examine the

person certifying the Gaon Panchayat Certificate in order to authenticate the said certificate as well as to prove the contents thereof. As the certificate was issued by the President of the Gaon Panchayat, we deem it more appropriate if the Secretary of the Gaon Panchayat is examined, inasmuch, as the Secretary is an official under the Government of Assam the interest of justice would be met.

10. Accordingly, without interfering with the order dated 27.05.2016, the matter stands remanded back to the Tribunal for a limited purpose to enable the petitioner to examine the Secretary of Kumargaon Gaon Panchayat in order to authenticate the Certificate dated 30.10.2015 as well as to prove the contents thereof. Apart from the above, the petitioner shall not be allowed to adduce any further evidence beyond which are already on record. Upon taking such evidence, if the Tribunal takes a view in favour of the petitioner, a reasoned order thereof shall be passed which shall prevail over the order dated 27.05.2016 and on the other hand, if the Tribunal takes a view against the petitioner, the earlier order shall prevail and the subsequent reasoned order shall be construed to be additional reasons for the same order.

11. The petitioner shall appear before the Tribunal on 03.04.2019 along with the Secretary of the Kumargaon Gaon Panchayat for his deposition to be taken. Upon such appearance, the Tribunal shall give its final consideration within a period of 30 days . In the event, the Secretary does not appear on the request of the petitioner, he may file appropriate application before the Tribunal for issuing summons to the Secretary.

12. Writ petition stands allowed to the extent as indicated above.