
(2020) 09 GAU CK 0008
In the Gauhati High Court
Case No : Writ Petition (C) No. 3383 Of 2020

Raina Begum

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 10-09-2020

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2020) 09 GAU CK 0008

Hon'ble Judges : Manojit Bhuyan, J;Hitesh Kumar Sarma, J

Bench : Division Bench

Advocate : A M S Mazumder

Final Decision : Dismissed

Judgement

Hitesh Kumar Sarma, J

Heard Mr. AMS Mazumder, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing Respondent Nos.1 and 3. Mr. J. Payeng, learned counsel appears for respondent nos.2, 5 and 6. Ms. B. Das, learned counsel appears for respondent no.4.

Petitioner assails order dated 06.09.2019 passed by the Foreigners' Tribunal-6th Silchar in F.T. 6th (D) Case No.1834/2018, declaring her to be a foreigner, having illegally entered into the territory of India (Assam) on or after 25.03.1971 from the specified territory.

For the purpose of discharging burden as required under section 9 of the Foreigners Act, 1946 to prove that she is not a foreigner, the petitioner projected one Moinul Haque Laskar as her father. In support of her case, she exhibited as many as 6 (six) documents, the particulars of which may be noticed, as under :

(i) Exhibit-I - Voter List of 1966 in the name of one Farmuj Ali, projected as the great grandfather of the petitioner, of village Saidpur Part-III, P.S. Silchar, district- Cachar under 12 No. Sonai Constituency.

(ii) Exhibit-II - Land Possession Certificate dated 16.05.1982, issued by the Assistant Settlement Officer, Sadar Circle, Silchar, certifying that petitioner's grandfather possessed dwelling house.

(iii) Exhibit-III - Voter List of 2005 in the name of one Moinul Haque Laskar, projected as the father of the petitioner, of village Kazidhar Part-III, P.S. Sonai, district- Cachar under 10 No. Sonai LAC.

(iv) Exhibit-IV - School Certificate (Duplicate) dated 3.7.2018, issued by the Head Teacher of 126 No. Uttar Bualjur L.P. School, P.O. Sonai certifying Moinul Haque Laskar as the father of petitioner and that she studied upto Class-II.

(v) Exhibit-V - Kabin-nama dated 19.01.1992, issued by the Kazi.

(vi) Exhibit-VI - Voter List of 1997 in the name of one Moinul Uddin Laskar, projected as the father of the petitioner, of village Kazidhar Part-III, district- Cachar under 10 No. Sonai LAC.

We have examined the entire case records including the impugned opinion and the documents relied upon by the petitioner. Out of the documents produced by the petitioner, the School Certificate and the Kabin-nama, marked as Exhibit - IV and V respectively, are produced to prove the linkage of the petitioner with her parents and her husband. At the top of the School Certificate, Exhibit-IV, it is indicated that it is a duplicate certificate for reasons not disclosed during the course of evidence by the petitioner. On the other hand, the Headmaster of the School, who had issued the said Exhibit-IV, School Certificate, i.e. the author of the certificate, has not been examined to prove its contents and, as such, the same has not been proved as required by law.

The petitioner has also failed to prove the Kabin-nama (Exhibit-V), in view of the fact that the issuing authority/author of the said Kabin-nama has not been examined to prove its contents. Appearance of name of great grandfather in 1966 Voter List (Exhibit-I) and the name of grandfather in the Land Possession Certificate (Exhibit-II) of the petitioner would be of no avail to the petitioner as she has failed to connect herself with her paternal great grandfather and grandfather respectively. Same is the fate with regard to Voter List of 2005 i.e. Exhibit-III, wherein the name of the father of the petitioner has appeared although the petitioner could not establish the linkage as this Court has already discarded the linkage documents referred to above as Exhibit-IV and V respectively.

However, the petitioner has examined her mother as D.W.2 who has led oral evidence to the effect that the petitioner is her daughter. But, she could not tell even the date of birth of the petitioner. The oral evidence of D.W.2, cannot establish the linkage of the petitioner with her.

As the primary issue in a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 relates to determination as to whether the proceedee is a foreigner or not, the relevant facts being especially within the

knowledge of the proceedee, therefore, the burden of proving citizenship absolutely rests upon the proceedee, notwithstanding anything contained in the Evidence Act, 1872. This is mandated under section 9 of the aforesaid Act, 1946. In the instant case and as observed above, the petitioner not only failed to discharge the burden but also utterly failed to make proof of the most crucial aspect, that is, in establishing linkage to her projected father Moinul Haque Laskar.

On the available materials, we find that the Tribunal rendered opinion/order upon due appreciation of the entire facts, evidence and documents brought on record. We find no infirmity in the findings and opinion recorded by the Tribunal. We would observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal. No case is made out that the impugned opinion/order was rendered without affording opportunity of hearing or in violation of the principles of natural justice and/or that it suffers from illegality on any ground of having been passed by placing reliance on evidence which is legally impermissible in law and/or that the Tribunal refused to admit admissible evidence and/or that the findings finds no support by any evidence at all. In other words, the petitioner has not been able to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion.

On the discussions and findings above, we find no merit in the writ petition. Accordingly, the same stands dismissed, however, without any order as to cost.

A copy of this order be made part of the case records of the Tribunal for future reference.