
(2007) 01 GAU CK 0023
In the Gauhati High Court

Rejia Khatoon

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Constitution of India, 1950 — Article 355

Citation : (2007) 1 GLT 992

Hon'ble Judges : B.K.Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Both the writ petitioners, declared as foreigners and illegal migrants to India (Assam) by both the Trial Court and the Appellate Court, have invoked the writ jurisdiction of this Court questioning the concurrent findings. Both the writ petitions being similar in nature involving the similar circumstances, have been heard together and are being disposed of by this common judgment and order.

FACTS IN W.P.(C) No. 5280/06

2. The petitioner claims to be the wife of one Md. Jabbor Ali and daughter of one Ajimuddin Sheikh @ Ujnuddin of Village Nagagota, Simlitola under P.S. Simlitola and P.S. Matia in the District of Goalpara (Assam). On a reference being made suspecting the petitioner to be an illegal migrant to India by the Superintendent of Police, Goalpara registered a case being 319(G)/88 in Illegal Migrant (Determination) Tribunal, Goalpara (Goalpara District Case No. 1039/86) was registered. Upon issuance of notice by the Tribunal, the petitioner responded to the same by submitting her written statement and engaging Advocate. Eventually, the proceeding before the Tribunal resulted in ex-parte hearing due to none appearance of the petitioner and the Tribunal by its judgment and order dated 18.10.01 held the petitioner to be an illegal migrant under the provision of IM (D) T Act, 1983 and declared that she entered into India on or after 25.03.71,

i.e. the cut off date. As regards the ex parte hearing and judgment, the petitioner has attributed the fault on the part of the engaged Advocate. She claims that because of the said fault on the part of the Advocate engaged by her, she could not produce certain vital documents before the Tribunal.

3. Being aggrieved by the aforesaid judgment dated 18.10.01 passed by the Tribunal, the petitioner preferred an appeal bearing No. 11/03 before the Illegal Migrant (Determination) Appellate Tribunal, Assam. In the appeal she filed an application on 19.09.02 praying for certain amendment to the memo of appeal and also for allowing her to file translated copies of the Annexures annexed to the appeal. The application was registered as Misc. Case No. 16/02 and the same was disposed of by order dated 18.01.03 rejecting the prayer for amendment and submission of translated copies. The prayer for amendment was vague and also did not conform to the requirements of Order 6 Rule 17 CPC. However, the petitioner was given opportunity to move an application under Order 41 Rule 27 C.P.C. In the order it was held that it is only the certified copy of the voter list which could be admitted for evidence and accordingly it was observed that the petitioner could obtain the certified copy of the same.

4. After the aforesaid order dated 18.01.03, the petitioner made a prayer for granting her three months time enabling her to obtain the certified copy of the voter list of 1966 in which, according to her, the names of her parents, grand mother and uncle appeared. According to her, the Appellate Tribunal without disposing of the said application dated 27.01.03 proceeded with the appeal and disposed of the same by judgment and order dated 22.05.03 dismissing the appeal. Hence the writ petition.

FACTS IN W.P.(C) No. 5281/06

5. In this Writ petition, the petitioner claims to be the wife of one Md. Kamaluddin and daughter of Mujibur Rahman of Village Nabagota, Simlitola under P.S. Simlitola and P.S. Matia in the District of Goalpara (Assam). Her case was also referred to the Tribunal and the Tribunal registered case No. 170(G)/88 (Goalpara District Case No. 979/86). As in the first case, she claims that the names of her grand parents and father appeared in the voter list of 1965. However, unlike the first case, in this case the petitioner in spite of receipt of notice from the Tribunal, did not respond to the same and she has defended the same by stating that she did so as per the advice of her relatives and her husband. According to her when she had shown documents in her possession to her husband and other relatives, they advised not to appear before the Tribunal. However, it is her case that she has enough documents in her possession to prove her citizenship of India.

6. Since the petitioner did not respond to the notice of the Tribunal, the matter resulted in ex-parte hearing and the Tribunal by its judgment and order dated 09.11.01 declared the petitioner to be an illegal migrant she having entered into India on or after 25.03.71, i.e. the cut off date.

7. Being aggrieved by the said judgment and order dated 09.11.01, the petitioner preferred an appeal bearing No. 10/03 before the Illegal Migrant (Determination) Appellate Tribunal. As in the first case, in this case also the petitioner filed an application on 19.09.02 for amendment of the Memo of Appeal and also for filing the translated copies of the appeal. The application was registered as Misc. Case No. 17/02 and the same was disposed of by order dated 18.01.03 rejecting the prayer for amendment, same being vague and having not confirmed to the requirement of Order 6 Rule 17 CPC. However, as in the first case, in this case also, liberty was granted to the petitioner to move appropriate application under Order 41 Rule 27 C.R.C. It was also observed that only the certified copy of the voter list could be admitted in evidence.

8. After the said order dated 18.01.03, the petitioner filed an application dated 27.01.03 praying for three months time enabling her to obtain the certified copy of the voter list of 1965. According to her the Tribunal without first disposing the said application, dismissed the appeal by the impugned judgment and order dated 22.05.03.

GROUND S URGED IN BOTH THE WRIT PETITIONS

9. In both the writ petitions, it is the common ground that since the names of their ancestors appeared in the voter list of 1965/1966, the petitioners cannot be said to be foreigners and illegal migrants to India. They have also referred to certain land documents purportedly standing in the name of their father. Both the writ petitioners have contended that the findings of the Tribunal that the Officer-in-Charge of the police station has no authority to issue NRC Certificate. It is the case of the petitioner that by the NRC issued by the Officer-in-Charge of Baghor P.S. it was certified that the name of the father of the petitioners appears in the NRC. The petitioners have claimed that they were born and brought up in India (Assam) and in support of that they have placed reliance on the documents annexed to the writ petition about which discussions have been made below. Further ground urged in the writ petition is that the tribunal ought to have allowed the applications by which three months time was prayed for to furnish the necessary documents.

10. An affidavit in opposition has been filed by the Superintendent of Police (Border), Goalpara (respondent No. 2) in W.P.(C) No. 5281/03. The facts involved in the case have been highlighted and as to how the petitioner on being contacted by the Enquiry Officer could not produce any documents in respect of her claim of Indian citizenship. It has been categorically denied that the particular Police Station and for that matter any Police Station is authorized to issue certified copy of the NRC, unless otherwise directed by the Govt. It has also been stated that doubtful persons who could enroll their names in the elected Rolls, are also required to produce necessary documents in support of their Indian citizenship. The petitioner has not filed any reply affidavit to the counter affidavit filed by the respondent No. 2.

11. I have heard Mr. M.A. Sheikh, learned Counsel for the petitioners as well as the learned CGSC appearing for the Union of India. I have also heard Ms. R. Chokraborty, learned State counsel representing the State respondents.

12. Mr. Sheikh, learned Counsel for the petitioners primarily argued on lack of opportunity provided to the petitioners to produce the relevant documents in respect of their citizenship of India. On the other hand, the learned Counsel for the respondents submitted that the concurrent findings of fact arrived at by the Tribunal cannot be lightly interfered with and that too exercising the writ jurisdiction. According to them both the petitioners have resorted to falsehood in respect of their claim of being Indian citizen. Ms. R. Chokraborty, learned State counsel referring to the affidavit in opposition filed by the respondent No. 2, i.e. the Superintendent of Police (Border), Goalpara, submitted that the photo copy of the NRC is not admissible in evidence and that the Officer-in-Charge at Baghbor P.S. was not authorized to issue the certified copy of the NRC.

13. I have carefully considered the submissions made by the learned Counsel for the parties and the materials on record. The records of both the Courts below have been received. What is the case of the petitioners in support of their plea that both of them were born and brought up in India and thus there ought not to have been any reference to the Tribunal by the Superintendent of Police (Border), Goalpara suspecting them to be illegal migrants to India on or after the cut off date, i.e. 25.03.71. In the writ petitions, the petitioners have claimed that their citizenship of India is by birth. While the petitioner in the first writ petition, i.e. W.P.(C) No. 5280/03, has declared her age as 40 years on the date of filing of the writ petition (26.06.03), in the second writ petition, i.e. W.P.(C) No. 5281/03, the petitioner has declared her age as 38 years on the date of filing of the writ petition (15.07.03). As per the age declared by the petitioners in the writ petitions, their respective year of birth would be in 1963 and 1965. Neither before the Courts below nor before this Court, the petitioners have furnished any document to show their such year of birth.

W.P. (C) No. 5280/03

DISCUSSION AND FINDING

14. In W.P.(C) No. 5280/03, the petitioner who claims to be the daughter of Ujumuddin and wife of Jabbor Ali has annexed the typed copy of the purported voter list of 1966 (extract) indicating therein one "Ujumuddin" and thus there is no mention of "Ujumuddin". In the affidavit sworn in support of the writ petition, the petitioner has mentioned her father's name as Ujumuddin. But in the cause title of the writ petition, she has named her father as Ajimuddin Sheikh @ Ujnuddin. Thus on the face of it, there is apparent contradictions in her own stand. Even if the typed copy (extract only) of the voter list of 1966 annexed to the writ petition as Annexure-5 is accepted to be genuine and even if the name of the father of the petitioner is accepted as Ajimuddin @ Ujnuddin @Ujumuddin etc., same by itself will not indicate that the petitioner was born and brought up

in India. Nothing has been shown to prove that the petitioner was born in India.

15. Contrary to the above description of the name of the father of the petitioner, she in her statement before the Enquiry Officer (E.O.), S.I., Shri Kishan Kant Sharma, made on 29.06.86 stated that she had come to India about 6/7 years back after marriage. She in her statement named her father as Ajimuddin but could not produce any document to prove her nationality. The E.O. also checked the NRC of 1951 and the voter list of 1966 and 1971 in which neither her name nor her father's name could be found. Accordingly he submitted his report to the higher authority with the finding that the petitioner was an illegal migrant. In the proceeding before the Tribunal he proved the report (Exh. No. 2) and made statements reiterating what he had furnished in the report.

16. Before the Tribunal the written statement on her behalf was filed by her husband and the same was signed by him only. The written statement was filed in the year 1995 and the petitioner herself never responded to the proceeding. She woke up only in the year 2002 when the expulsion order was served on her. This aspect of the matter has been discussed in the impugned appellate order. In the written statement filed before the Trial Court no documents were enclosed along with the same and the statement of the enquiry officer went unrefuted. Thus, the Appellate Tribunal has held that the Trial Court did not commit any wrong in answering the reference in affirmative and against the petitioner.

17. Before the Appellate Tribunal although the petitioner filed certain documents, all photo copies only, and she never submitted the originals although she was asked to do so. She was also asked to produce the certified copies of the public documents and to move an application under Order 41, Rule 27 C.P.C., but she did not do so. The documents furnished before the Appellate Tribunal and so also in the writ petition are the certificates issued by the Gaon Panchayat and some other persons in which it has been simply stated that the petitioner is the permanent resident of the village in question without any indication as to since when and that she was born and brought up in that village or anywhere else in Assam or any other parts of India.

18. The Appellate Tribunal has noticed the grounds urged in the Memo of Appeal in respect of the NRC said to have been issued by the Officer-in-Charge, Baghbor P.S. The petitioner claims that the name appearing in the certificate is the name of her father. This aspect of the matter has been discussed above. When the petitioner herself does not correctly state the name of her father, no credence could be given to such certificate. Moreover, as has been rightly observed by the Appellate Tribunal, the Officer-in-Charge of Baghbor P.S. does not have any authority to issue such certificate. In paragraph-5 of the Memo Appeal, the petitioner named her father as Ugumuddin @ Agimuddin @Ugumuddin Sheikh, but could not produce any document to show that the name of her father is as such. According to the Enquiry Officer the name of her father is Ajimuddin. Even in the purported voter list annexed as Annexure- 5 to the writ petition and produced before the Tribunal, the Tribunal found that same did not disclose her

father's name. In this connection, the observation of the Tribunal is quoted below:

In para 6 of the Memo of Appeal, it is stated that the father of the Appellant is the Voter for the year 1966. In para 5 of the grounds of Appeal, the name of the Father of the Appellant given is Ugu Muddin @ Agimuddin @Ugu Muddin Sheikh. The copy of the voter list filed is not in his name. In para 1 of the grounds of Appeal it is stated that the Appellant is the daughter of Late Ugu Muddin @Ugu Muddin Sheikh @ Agimuddin Sheikh. It appears as it Suit the appellant the changes the alias of her father. In any case it has not been established that the Appellant's father was Ugu Muddin Sheikh @ Agimuddin Sheikh. Some papers have also been filed showing that in subsequent years, the name of the Appellant was entered as voter.

These relates to the year subsequent to the cut off date. Those papers would not help the Appellant. In view of the discussion made above, this Tribunal is of the view that the Lower Tribunal, rightly came to the conclusion that the Appellant is an illegal migrant. She has failed to prove in this Tribunal that the name of her father Ugu Muddin @ Agimuddin & Ugumuddin Sheikh was entered as Voter in the year 1966. Moreover this stray entry would not prove anything. No reason is forthcoming as to why his name was not consistently entered in the Voter list from the very beginning. In view of the above, the Appeal has no force and is dismissed. The stay order granted on 21.08.02 is vacated.

19. During the course of hearing the learned Counsel for the petitioner was given opportunity to produce documents in respect of the claim of the petitioner that she is a citizen of India by birth and/or has entered into India before the cut off date, i.e. 25.03.71, but no documents could be produced. It is in this connection the plea of the petitioner that she was not given opportunity to furnish the documents before the Appellate Tribunal for which she made an application on 18.01.03 praying for three months becomes inconsequential. Three months time prayed for vide application dated 18.01.03 had long expired when the impugned judgment and order dated 22.05.03 was delivered. Nothing prevented the petitioner from producing the documents as was allowed by the Appellate Tribunal by filing application under Order 41, Rule 27 C.P.C. She did not file any such application and instead filed the application dated 18.01.03 praying for three months time to produce the certified copy of the voter list of 1966. Even after expiry of three months and till delivery of the judgment dated 22.05.03 she could not produce the same.

20. If the petitioner is a citizen of India by birth, she could have produced at least a certificate certifying the same. However, even in the writ petition except the certificate dated 12.07.02 issued by Baghmara Char Gaon Panchayat certifying her to be the resident of Village No. 1 Baghmara Char P.S. and Mauza Baghbor, Dist. Barpeta, she has not produced anything to prove her citizenship. The certificate also does not certify that she is an Indian citizen. It is also not understood as to how this certificate could be issued by the particular Gaon

Panchayat of Barpeta District, when the petitioner claims to be the resident of village Nabagota, Simlitola under P.S. Matia in the District of Goalpara.

21. In view of the above, I do not find any merit in the writ petition so as to interfere with the concurrent finding of fact arrived at by both the Courts below and accordingly it is dismissed.

W.P.(C) No. 5281/03

DISCUSSION AND FINDING

22. As in the first writ petition, in this writ petition also it is the claim of the petitioner that she is an Indian citizen by birth. If her age disclosed in the affidavit filed in respect of the writ petition is taken into account (38 years), then her year of birth would be 1965. However, neither before the Courts below nor before this Court she could produce anything to show her date of birth in India. As in the first case, in the second case also she has placed reliance on the typed written copy of the voter list of 1965 depicting the names of Sansher Mandal, Moiful Nesha and Mozibur Rahman whom she claims to be her grand parents and father. She has also placed reliance on certain land documents purportedly standing in the name of her father. However, she has failed to produce anything to establish that she is an Indian citizen by birth. The plea of her nonappearance before the Trial court as noticed above, is not at all convincing.

23. The Tribunal examined the Enquiry Officer who in his deposition proved the report furnished by him. He stated in his deposition that neither the name of the petitioner nor the name of her husband could be found in the NRC 1951 and in the voter lists. The order of Superintendent of Police (Border), Goalpara and the report furnished by the Enquiry Officer were duly exhibited before the Trial Court. On the basis of the evidence on record, the Trial Court held the petitioner to be illegal migrant to India. As in the first case, in this case also the petitioner preferred appeal before the Appellate Tribunal. In the Appellate Tribunal she vide application dated 19.09.02 prayed for amendment of the appeal with further prayer for accepting photo copies of certain documents which the Tribunal has rightly held to be inadmissible in evidence. The amendments prayed for were also not specified. Accordingly, liberty was granted to move fresh application complying with the requirements of the amendment. As regards the photo copies and typed copies of the documents, it was observed that the original documents, should have been filed and if the documents are public documents, then the certified copies thereof should be filed. Accordingly liberty was granted to the petitioner to furnish additional evidence in the appeal fulfilling the requirements of Order 41, Rule 27 C.P.C. The order was passed on 18.01.2003.

24. Instead of filing such an application, the petitioner prayed for three months time to furnish documents. However, as in the first case, she could not produce any documents in original even after expiry of three months and till delivery of the judgment on 22.05.03 by the Appellate Tribunal. In the impugned judgment of the Appellate Tribunal various dates fixed for appearance of the petitioner

have been mentioned. The petitioner was served with notice as many as four times, but she did not respond to the same. Thus, the allegation made against her went unrefuted. It has been rightly observed by the Appellate Tribunal that from her conduct it clearly appears that she did not want to contest the case.

25. The Enquiry Officer in his statement stated that during the enquiry conducted by him the petitioner could not produce any documentary evidence in support of her citizenship of India. Contrary to the fact that she was duly served with the notice from the Trial Court on four different occasions and the admission thereof in the writ petition, in the application filed before the Appellate Tribunal praying for condonation of delay in preferring the appeal, she made a statement that she could come to know about the final decision of the Trial Court only when acting in the said decision she was sought to be deported to Bangladesh. It was only in such circumstances she applied for the certified copy of the order passed by the Trial Court and after obtaining the same, approached the Appellate Tribunal by preferring the appeal. Thus, it has been rightly observed in the impugned judgment of the Appellate Tribunal that she failed to show any sufficient cause for her absence in the lower Tribunal. Thus, the Appellate Tribunal rightly refused to set aside ex-parte order passed by the lower Tribunal.

26. As in the first case, in this case also the petitioner in her statement before the Enquiry Officer stated that she had come to India about 6/7 years back. The Enquiry Officer in his statement stated that upon his examination of the voter lists and the NRC, he neither found her name nor her husband's name. The testimony of the Enquiry Officer went unchallenged and uncontroverted with the calculated risk of the petitioner herself.

27. The Appellate Tribunal has also discussed about the photostat copies of the documents produced by the petitioner. She did not move any application under Order 41, Rule 27 C.P.C. as per the liberty granted to her. The Appellate Tribunal rightly refused to accept the additional evidence in absence of any appropriate application. However, this Court by way of providing a further opportunity permitted the learned Counsel for the petitioner to produce the documents sought to be relied upon by the petitioner. However, no documents could be produced so as to establish that the petitioner was born and brought up in India. Even in the writ petition except the purported voter list of 1965 depicting the names of her purported grand parents and father, purported land documents standing in her father's name and the certificate purportedly issued on 20.09.01 certifying her to be the resident of Village Kamarpota under Simlitola Gaon Panchayat, no other documents have been annexed.

28. A little discussion about these documents annexed to the writ petition is to be made. The purported Annexure-4 voter list is of 1965 showing the age of her purported father as 25 years. If that be so, the year of birth of the petitioner, as claimed by her, being 1965, there is no reason as to why she could not produce anything to prove that she was born and brought up in India. There is also nothing to indicate that Majibur Rahman is her father. Even if he is her father,

same by itself cannot prove that the petitioner is an Indian citizen by birth. The certificate of the Gaon Panchayat annexed to the writ petition as Annexure-8 certifying her to be a permanent resident of village Kamarpota, under Simlitolga Gaon Panchayat is also of no consequence. The certificate is of 2001 (20.09.01) and does not certify that the petitioner is a citizen of India by birth and/ or she had come to Assam (India) before the cut off date, i.e. 25.03.71. In the cause title of the writ petition as well as in the affidavit filed in support of the writ petition, the petitioner has named her village as Nabagota under P.S. Matia, but in the certificate she is stated to be of village Kamarpota under P.S. Rongjuli. This inherent contradictions stare on the face of it and have not been explained in any manner.

29. In the writ petition, the petitioner has made serious objection to the observations made by the Appellate Tribunal in respect of NRC issued by the Police Station. However, on perusal of the impugned judgment, I do not find any mention about the NRC by the Tribunal. No discussion has been made in respect of any NRC and yet the petitioner has strongly contended about the purported wrong observation of the Tribunal in respect of the NRC which on the face of it is illfounded and misleading. The Appellate Tribunal has also discussed about the subsequent developments and has rightly held that the same are of no consequence.

30. During the course of hearing, Mr. Sheikh, learned Counsel for the petitioner produced the photo copy of the voter list (extract) to claim that the petitioner's name appeared in the voter list of 1985. This photocopy is the copy of the certified copy obtained on 01.08.02 describing the name of her husband as Komoluddin and her age as 25 years. If the petitioner was born in 1965, she would have been 20 years of age in 1985. Although in the writ petition, she has stated her husband's name as Kamaluddin, but in the said copy, her husband's name is indicated as Komoluddin. Even if these variations are stated to be minor variations, but the most vital aspect of the matter cannot be lost sight of is that throughout the proceedings before the Tribunal and even in the writ petition, the petitioner never took the plea of inclusion of her name in the 1985 voter list. The writ petition was filed on 15.07.03 without the said plea. Only plea taken in the writ petition is noted above. The copy of the voter list having been obtained on 01.08.02, nothing prevented the petitioner to take the plea or produce the same. It is only during the course of hearing in 2006, the learned Counsel for the petitioner produced the same. This casts a serious doubt on the whole game plan of the petitioner. Even otherwise also this aspect of the matter need not detain us, as the cut off date is 25.03.71.

31. Although the production of the copy of the purported voter list (extract) of 1985 purportedly containing the name of the petitioner is inconsequential, and the same is also doubtful in view of the discussions made in the preceding paragraph, another aspect of the matter has come to the forefront which needs to be discussed. When the aforesaid photocopy of the purported voter list of

1985 was produced by the learned Counsel for the petitioner, learned State counsel sought for instruction on the same from the authority. In turn, the Election Officer, Goalpara by his letter No. GEL 6/93/237 dated 1st December, 2006 certified that one Rejia Khatun's name is enlisted in 1979 Electoral Rolls under village No. and name 200 Nabagota Simlitola under part No. 204. In the letter, other details such as serial No., house No. father/husband's name, age etc., have also been indicated.

32. In this letter, the name of the husband of Rejia Khatun is indicated as Kamal Sheikh and not Komoluddin or Kamaluddin and his and Rejia Khatun's age as on 1st January, 1979 have been shown as 22 and 21 years. On the other hand, in the photocopy of the voter list of 1985 (extract), Rejia Khatun's husband is indicated as Komoluddin and their respective age as 32 and 25. If her year of birth is 1965, then her age in 1979 and 1985 would have been 14 years and 20 years. Further, if her age is taken as 21 and 25 in 1979 and 1985, her age on the date of filing of the writ petition would have been 45 and 43 years contrary to her declaration on oath that her age at the time of filing of the writ petition on 15th July, 2003 was 38 years. While in the letter certifying the 1979 extract of the voter list, the serial Nos. and house No. are 797, 993 and 181 respectively, in the 1985 voter list (extract), same are indicated as 89, 90 and 35. In the 1979 voter list village No. is indicated as 200, whereas in the 1985 list it is indicated as 153. Coupled with this, the petitioner never before till 2006 amidst of hearing of the writ petition claimed that her name is included in 1985 voter list. Regarding inclusion of her name in 1979 voter list, same was never her claim. The letter from the Election Officer, Goalpara was issued to the learned State Counsel by way of furnishing instruction to her.

33. Above discussions lead to the irresistible conclusion that the petitioner, either has resorted to falsehood by taking the name of others and producing their document (1985 voter list extract). Even this, while compared with 1979 voter list (extract), does not tally with the particulars. Coupled with this, it was never the claim/plea of the petitioner, even in the writ petition, that her name was included in the voter list of 1985. The copy thereof having been obtained on 01.08.02, same could have easily produced before the Appellate Tribunal. Not to speak of doing so, it was also not her plea that there name was included in 1985 voter list. The 1979 voter list with the indication thereof is a new development which has come to light through the learned State counsel. There is nothing to indicate that it is the petitioner whose name has been included in 1985 or 1979 voter list, which was also not the claim of the petitioner. It will also have to be borne in mind that the cut off date is 25.03.71.

34. Above aspect of the matter should be a serious concern for all. This is an eye opener as to how a foreigner taking advantage of similarity in names etc. can take recourse to falsehood and manipulation with active participation of others, to claim Indian Citizenship. This aspect of the matter has been highlighted so that the authorities at the helm of affairs become careful in handling such a

serious matter with the threat perception of the State of Assam being swamped by the foreign nationals, more particularly the Bangladeshi nationals.

35. The writ petitioners have miserably failed to establish their citizenship of India and that they are not illegal migrants to India. The finding of fact arrived at by the authorities below cannot be interfered with lightly in absence of any convincing materials. The petitioners, to prove their citizenship of India have not been able to furnish any document. The documents annexed to the writ petitions purportedly pertaining to her father do not inspire the confidence of this Court. The certificates (translated copies only) are all after the impugned judgments and orders and the deportation order passed by the Superintendent of Police, Barpeta.

36. The petitioners could not produce any valid documents to prove their citizenship of India either before the authority who verified the matter or before the Tribunal. Now coming to the writ Court with the aforesaid revelations they have tried to develop their respective cases by furnishing the documents which on the face of it do not help the case of the petitioners. In any case, the finding of fact arrived at by the said authorities cannot be questioned by producing the documents issued after closure of the said proceedings. Even the said documents, taken into consideration, do not establish the citizenship of India, which the petitioners claim by birth.

37. As has been observed by the Apex Court in *Sarbananda Sonowal Vs. Union of India (UOI) and Another*, , the general rule in leading democracies of the world is that where a person claims to be a citizen of a particular country, the burden is upon him to prove that he is a citizen of that country. In the instant case, both the petitioners, even in this writ proceeding, have failed to establish their citizenship of India by birth as has been claimed by them and/or they entered into India before the cut off date, i.e. 25.03.71.

38. All the above factors lead to the irresistible conclusion that the petitioners are not entitled to any relief and their writ petitions are liable to be dismissed which I accordingly do.

39. A vivid picture of threat to the North Eastern Region, more particularly to the State of Assam due to unabated illegal migration of Bangladeshi nationals has been depicted in the recent Supreme Court judgment reported in *Sarbananda Sonowal Vs. Union of India (UOI) and Another*, . The judgment finds mention of the report of the Governor of Assam dated 08.11.98 furnished to the President of India. In the report it was clearly indicated that unabated influx of illegal migrants of Bangladeshi nationals into Assam has led to a perceptible change in the demographic pattern of the State and has reduced the Assamese people to a minority in their own State. In paragraph 37 of the judgment, the Apex Court referring to the report of the Governor has highlighted as to how the unabated influx of illegal migrants of Bangladesh into Assam is a contributory factor behind the outbreak of insurgency in the State and the illegal migration not only affects

the people of Assam but has more dangerous dimensions of greatly undermining our national security. The report referred to by the Apex Court further mentioned about the activity of the Pakistani ISI in Bangladesh supporting the militants in Assam and as to how Muslim militant organizations have mushroomed in Assam.

40. After referring to the report of the Governor, the Apex Court has made the following observations in paragraphs 38 and 45 of the judgment:

38. This being the situation there can be no manner of doubt that the State of Assam is facing "external aggression and internal disturbance".

On account of large scale illegal migration of Bangladeshi nationals. It, therefore, becomes the duty of Union of India to take all measures for protection of the State of Assam from such external aggression and internal disturbance as enjoined in Article 355 of the constitution. Having regard to this constitutional mandate, the question arises whether the Union of India has taken any measures for that purpose.

45. As mentioned earlier the influx of Bangladeshi nationals who have illegally migrated into Assam pose a threat to the integrity and security of the north-eastern region. Their presence has changed the demographic character of that region and the local people of Assam have been reduced to a status of minority in certain districts.

41. There is no gainsaying that the influx of illegal migrants of Bangladesh into Assam has posed a serious threat to the integrity and security of the North Eastern Region, more particularly Assam. As has been observed by the Apex Court in the aforesaid judgment, their presence has changed the demographic character of the entire region and the people of Assam have been reduced to a status of minority in certain districts. The present two cases are only illustrative and not exhaustive. Many more such Rejia Khatuns perhaps are freely moving throughout the territory of Assam and for that matter India about which serious concern has been expressed umpteen number of times by various organizations about which categorical mention has been made in the aforesaid judgment of the Apex Court.

42. What is required is a strong political will unmindful of the political gains from the presence of the illegal migrants. It is the national interest and not the individual or political interest of any particular party, which must prevail under all circumstances. A clear message has been given by the Apex Court in the aforesaid judgment to be carried into action both by the State and the Union of India. The present two cases are only pointer to the concern expressed by the Apex Court.

43. Both the writ petitions are dismissed. Consequently a direction is issued to the Superintendent of Police (S.P.), Goalpara to implement the Appellate Tribunal impugned judgments and orders dated 22.05.03 passed in Appeal Case Nos. 10/03 and 11/03 by which the judgments of the lower Tribunals have been

affirmed and the consequential notices issued by the S.P., Goalpara, Assam for deportation of the petitioner with all its promptness. It is also directed that the S.P., Goalpara shall carry out further operation and enquiry to find out as to whether anyone else connected with the petitioners or any other person(s) in the area are illegal migrants to India and upon detection of any such foreign nationals who are illegal migrants within his jurisdiction, he shall take prompt and immediate action towards deportation of such foreign nationals in accordance with law.

44. In view of the above, I do not find any infirmity with the impugned judgment and order of the Appellate Tribunal by which the order of the lower Tribunal has been confirmed. The writ petition is devoid of any merit. Nothing could be pointed out and/or urged as to why the concurrent findings of fact arrived at by both the Courts below are required to be interfered with exercising the writ jurisdiction.

45. With the above observations and directions, both the writ petitions are dismissed. Registry shall send down the LCR immediately along with a copy of this judgment and order. The Registry shall also send copy of this judgment and order to the Superintendent of Police, Goalpara for his needful in favour of the direction contained in paragraph 43 above.

Bring this order to the notice of the Deputy Registrar (J).