

(2023) 07 GAU CK 0027

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4017 Of 2023

Rejina Bibi

APPELLANT

Vs

Union Of India And 5 Ors.

RESPONDENT

Date of Decision : 31-07-2023

Acts Referred:

Evidence Act, 1872 — Section 65, 66

Citation : (2023) 07 GAU CK 0027

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

Bench : Division Bench

Advocate : J Laskar

Final Decision : Disposed Of

Judgement

1. Heard Mr. J. Laskar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Kamrup(R), Amingaon and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Rejina Bibi was referred to the Foreigners' Tribunal, Kamrup (Rural) for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946 and accordingly GFT(R) Case No. 1695/2017 was registered. The Tribunal had rendered its opinion dated 30.04.2019, by which the petitioner was declared to be a foreigner under the Foreigners Act, 1946. Being aggrieved, WP(C) No. 3970/2019 was instituted which was given a final consideration by the order dated 10.03.2023.

3. In WP(C) No. 3970/2019, the petitioner relied upon the voters' list of 1966 of village Nahira, Mouza Pub Samaria, P.S. Polashbari in the Kamrup district which contained the name of Hussain Ali son of Satu at Sl. No. 2443. The petitioner

also relied upon a school certificate issued by the Headmaster of Satrapara Ideal High School which contained the information that Rejina Begam is the daughter of Md. Hussain Ali of village Satrapara. Although there was a variance in the name of the village i.e. the voters' list of 1966 was of village Nahira and the school certificate contained the information in respect of village Satrapara, but the said aspect was clarified by referring to the voters' list of 1977 which gave an indication that Nahira and Satrapara are in fact one and the same village. In the circumstance, the matter was remanded back to the Tribunal to enable the petitioner to render evidence of the Headmaster of Satrapara Ideal High School requiring him to produce the records in original of the school to establish the information contained in the school certificate which was relied upon by the petitioner.

4. The law regarding the acceptability of a school certificate to provide the factual aspect as to who may be the father of a proceedee in a Foreigners' Tribunal and of which village the father belongs to, was laid down by this Court in its judgment in the case of Anima Das Vs. Union of India and Ors., reported in (2019) 5 Gau LR 465. In paragraphs 12, 13 and 14 of the said judgment, the law laid down by the Hon'ble Supreme Court in respect of acceptability and legality of a certificate issued by the Headmaster of a school was discussed which is extracted as below:

"12. The law as regards the acceptability and legality of a certificate issued by a school authority had been considered by the Supreme Court in its judgment rendered in Ram Suresh Singh v. Prabhat Singh alias Chotu Singh, (2009) 6 SCC 681, wherein in paragraph 12 it had been held as follows:

"12.....An entry in a school register may not be a public document and, thus, must be proved in accordance with law, as has been held by this court in Birad Mai Singhvi, but in this case the said entry has been proved."

13. In Birad Mal Singhvi v. Anand Purohit, AIR 1998 SC 1796, in paragraph, in respect of certain school registers and other documents being produced as Exhibits-8, 9,10,11 and 12, it was held that merely because the documents Exhibits-8,9,10,11 and 12 were proved, it does not mean that the contents of the documents were also proved. It was further held that mere proof of the documents Exhibits-8, 9,10,11 and 12 would not tantamount to a proof of all the contents stated in the documents.

14. Again in respect of a certificate issued by the school authorities just a few days prior to the date of superannuation of the person who had issued the certificate, a view was taken by the Supreme Court in paragraph 9 of Union of India v. Kantilal Hematram Pandya, (1995) 3 SCC 17 that the document appeared to have been brought into existence for the benefit of the pending proceedings therein and, therefore, the concerned certificate was rightly not relied upon."

5. In paragraph 17, the proposition as regards the acceptability of a certificate

that can be culled out was laid down which is extracted as below:

"17. From the aforesaid proposition, the following can be called out in respect of a certificate:

(i) a certificate is a mere testimony that a fact has or has not taken place, which is signed and authenticated to be a legal evidence and which imports that the party certifying knows the fact that he certifies.

(ii) the very aspect that the certificate imports that the party certifying knows the fact that he certifies also imports a corollary burden that the party certifying has to demonstrate through acceptable evidence as regards the source of his knowing the fact, i.e., if the source is his knowledge, to bring on record as to from where he had acquired the knowledge and if it is from record, to exhibit and prove the record."

6. A reading of the afore-extracted propositions makes it discernible that in order to establish a fact as to the relationship between the proceedee and the claimed father by relying upon a school certificate, there would be a necessity of the Tribunal to call for the original of the admission register etc. which may contain the information, through the Headmaster of the school and an examination be done as to whether the information contained in the school records do establish that the proceedee before the Tribunal is the son or daughter of the person who is claimed to be the father, who again would have to be a resident of the place which may be mentioned in the school certificate.

7. When the matter was remanded back to the Tribunal by the order dated 10.03.2023 in WP(C) No. 3970/2019, the Tribunal took note of a petition submitted by the petitioner/proceedee being petition No. 60/2023 dated 20.06.2023 making a request that the Headmaster of the school concerned be called as a witness. The said petition was rejected by the Tribunal by relying upon a judgment of this Court in Khudeja Khatoon Vs. Union of India and Ors. in WP(C) No. 7756/2016, wherein in respect of an evidence to be rendered by a Gaonburah, reliance was placed on Section 66 of the Indian Evidence Act, 1872 (for short 'the Act of 1872').

8. Section 66 of the Act of 1872 provides that secondary evidence of the contents of the documents referred to in Section 65, Clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is (or to his attorney or pleader), such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case.

9. By relying upon the provision of Section 66 of the Act of 1872, this Court held in Khudeja Khatoon (supra) that if the notice contemplated under Section 66 of the Act of 1872 is not given by the person concerned, in such event the party in whose possession or power the secondary evidence is available shall not be

called as a witness to the Court for rendering evidence.

10. In the instant case, it is noticed that the evidence to be produced by the Headmaster of the school concerned along with the admission register in original or any other school records in original is a primary evidence and not a secondary evidence covered by Section 66 of the Act of 1872 and as such, the bar under Section 66 of the Act of 1872 that a witness should not be called unless he had been issued prior notice for producing the secondary evidence would be inapplicable.

11. From such point of view, we are unable to accept with the view of the Tribunal in the order dated 20.06.2023 by which the petition No. 60/2023 dated 20.06.2023 was rejected. However, we have also taken note that the requirement of calling the Headmaster of a school who had issued the certificate is an ancillary requirement whereas the core requirement of the law as laid down in *Anima Das (supra)* is the production of the admission register in original or any other records of the school in original which may contain the information as may be provided in the school certificate relied upon by a proceedee in a Foreigners' Tribunal.

12. From such point of view, it would be more prudent for the Tribunal to allow the Headmaster to render evidence, but also ensure that the admission register in original or any other records which may contain the information provided in the school certificate is also made available before the Tribunal for its examination.

13. In this aspect, we have to observe with some concern that while examining several materials relating to the reliance upon a school certificate where the admission registers in original of the schools have been called for, it had been noticed that in respect of an overwhelming 90% where the admission registers had been called for, the admission registers itself were fraudulent, manipulated as regards the contents of the name of the proceedee in such admission registers. In one such register, it was noticed that after the last entry in the previous page, one more line was subsequently added whereas in the next page before the first entry, another line was subsequently added which resulted in a situation that the last entry in the previous page and the first entry in the next page was entered later on and the name of the proceedee happened to be in the added line of the previous page, which gave a prima facie indication that the register itself was manipulated.

14. In another admission register which was produced before the Court, it was noticed that beyond the given serial number which contained the name of the students in the admission register, with a different handwriting with different ink, some more names were added and the name of the proceedee was found in the later on added names rather than in the original names contained in the admission register.

15. Considering the aforesaid aspect, it is directed that the Tribunal shall

scrupulously examine any original school admission registers or any original documents to be produced before the Tribunal to establish the information that may be contained in the school certificate and arrive at its own satisfaction that the admission register in original or any school records are not manipulated for the purpose to include the name of the proceedee.

16. Accordingly, the matter stands remanded back to the Tribunal to allow the petitioner to adduce the evidence of the Headmaster of Satrapara Ideal High School as well as allow the school authorities to produce the admission register in original or any school records in original which may contain the information as contained in the school certificate which is relied upon by the petitioner. Upon doing the needful, the Tribunal to pass a reasoned order.

17. It is stated that as the next of hearing is fixed on 10.08.2023, the petitioner shall appear before the Tribunal and the Tribunal shall consider her petition No. 60/2023 calling the Headmaster of the school concerned as per law and also require the Headmaster to produce the admission register in original or any other school records in original which may corroborate the information contained in the school certificate. However, the Tribunal shall scrupulously examine the original school admission registers or any other original school records to arrive at its own satisfaction regarding the authenticity of such records. Till the reasoned order is passed, no coercive action be taken against the petitioner.

18. The proceedings related to the acceptability of the school certificate as provided in Anima Das (supra) is clarified as indicated above and both judgments are to be read together and conjointly.

19. Writ petition stands disposed of as indicated above.

20. A copy of this judgment and order be circulated to all the Foreigners' Tribunals for information and for further compliance as well as to Ms. A. Verma, learned counsel for the respondents in the Home Department.