

(2013) 10 GAU CK 0010
In the Gauhati High Court
Case No : W.P. (C) No. 3631 of 2013

Runupa Khatun

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 1 GLD 340

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—This writ petition is directed against the impugned judgment and order dated 23.04.2013, passed by the learned Member, Foreigners Tribunal-III, Barpeta Assam, in F.T. Case No. 20/III/07 (IMDT REF case No. 3116/1997 dated 28.05.1998), State of Assam v. Kanuwa Begum. I have heard Ms. S. sultana, learned counsel for the petitioner. I have also heard Mr. M. Bhagabati, learned CGC and Mrs. H.M. Phukan, learned State Counsel. I have also considered the entire materials on record, including the records received from the Tribunal.

2. As will be evident from the records of the case, long 16 years have gone by since the particular reference was made against the petitioner suspecting her to be a foreign national, who entered into Assam after the cut off date i.e. 25.03.1971.

3. The case emanated from the report, of the jurisdictional Local Verification Officer (LVO) to the then Electoral Officer for 46 No. Sarukhetri Assembly Constituency, having doubt about the citizenship of the petitioner, forwarded the matter in the prescribed format vide his memo dated 06.11.1997 to the Superintendent of Police for deciding the question as to whether she is a citizen of India or not. On receipt of the request placed by the ARO, the Superintendent of Police forwarded the matter vide Reference Case No. 3116/1997 dated

28.05.1998 to the Foreigners Tribunal, Barpeta for determination of the nationality of the petitioner. On receipt of notice, the petitioner did not respond to the same and accordingly by order dated 09.12.2003, an order for ex-parte hearing was passed. Thereafter summons were sent to the LVO for adducing evidence, but none of the summons was returned by the police concerned. Another notice was issued to the petitioner, which was duly received by her, but again she remained absent without any step.

4. After scraping the IMDT Act by the Apex Court in *Sarbananda Sonowal Vs. Union of India (UOI) and Another*, a fresh notice was served on the petitioner, on receipt of which, she appeared and filed Written Statement on 25.06.2007. The LVO and another witness, namely, Moinul Hoque, Gaonburah of village Barmara were summoned and were examined on oath by the Tribunal on 26.09.2008 and 02.01.2009, respectively. On the other hand, the petitioner prayed for time to adduce her evidence. The records have revealed that on all subsequent dates, the case was to be adjourned mostly due to absence of the petitioner and on 13.08.2009, her engaged counsel filed a petition praying for permission to withdraw the Vokat Nama on the ground of non-cooperation on the part of the petitioner. The petition was allowed and fresh notice was issued to the petitioner, on receipt of which, she again appeared on 27.10.2009 along with her newly engaged counsel and submitted a petition to allow her to file written statement. The prayer was allowed. Thereafter on the 7th date fixed for filing written statement, the petitioner filed her 2nd written statement on 26.03.2010. But on subsequent three consecutive dates fixed for relevant documents, she remained absent without any steps. On the 4th date, she appeared along with her engaged counsel and filed a petition, showing cause of her absence and prayed for further time, which was allowed. On the next three dates also, petitions were filed on her behalf praying for time, which was allowed.

5. When the petitioner remained absent on consecutive 7th dates, vide order dated 28.12.2010, her side of the case was closed and the matter was fixed for hearing of argument on 17.01.2011. However, she again appeared on 25.11.2011 along with another advocate and filed a petition for setting aside the order for ex-parte hearing. Her prayer was allowed. Eventually after granting several adjournments, the petitioner filed her 3rd written statement on 18.02.2012. The LVO was again summoned, who appeared on 11.06.2012 and was examined. Thereafter the case was again adjourned for evidence of the petitioner consecutively for nine dates and ultimately on 10.04.2013, the petitioner filed her evidence-in-chief and she was cross-examined.

6. The aforesaid facts in respect of the proceeding before the Tribunal would go to show as to how delay is caused in deciding such a sensitive issue as to whether the proceedee is a foreign national or not. It need not to be emphasized that the case of a suspected foreign national is required to be disposed of as quickly as possible. But as the experience of this Court goes, in some cases, such proceedings last even for 20 years and even more than that.

7. As discussed in the impugned judgment and also found in the records of the Tribunal, the LVO Sri Kitabuddin Ahmed was examined on oath twice on 26.09.2008 and 11.06.2012 by the Tribunal. He in his evidence stated that during 1997 while he was posted and working as Executive Engineer in Barpeta E & D Division, as per the direction of the Electoral Registration Officer for 46 No. Sarukhetri Legislative Assembly, he had gone to the village Barmara along with Gaonbura of the said village and met the petitioner. During enquiry, on being asked, she failed to furnish any relevant document in support of her Indian Citizenship. Accordingly, he submitted his report (Ext.1). In his cross-examination, he denied that no time was allowed to the petitioner to submit the relevant documents. Another witness, namely, Moinul Hoque, the Gaonburah of village Barmara stated in his evidence that he had accompanied the LVO while visiting the petitioner and that she could not produce any document in support of her nationality.

8. As discussed in the impugned judgment and also revealed from the records of the Tribunal, the petitioner took four years to file her 1st written statement on 26.11.2007. Thereafter she filed her 2nd written statement on 26.03.2010 followed by the 3rd written statement on 18.02.2012. In her 1st written statement, she has stated that the name of her father was enrolled as a voter in the voter list since 1966 under 54 No. Senga Legislative Assembly; that she was married to Laskar Ali, Son of Gumar Ali of village Barmara. Along with the written statement, she also submitted photocopy of one voter list of 1966 and certificate dated 23.08.2007 issued by Gaonbura of village Baysa only.

9. In the 2nd written statement, improving her previous version made in her 1st written statement, she has stated that she was born and brought up at village Bardia and that she was married to Mr. Laskar Ali, son of late Gumar Ali. Further statement made is that her father Nowaz Kha's name was recorded in the voter list of 1966 and 1970. In para 6 of this written statement, she has specifically stated that her father died about 35 years back.

10. In para 3 of her 3rd and final written statement, the petitioner has stated that the names of her father and mother are recorded in the "current voter list". In para 4 of the said written statement, she has stated that the name of her father and mother appeared in the voter list of 1970. The petitioner in her evidence on affidavit stated that she was born and brought up at village Bardia and that her father had purchased landed property in 1976 and that names of her parents and her uncle Ali Akbar Kha were recorded in the voter list of 1966 and 1970. In support of her case, the petitioner produced the certified copies of voter list of 1966 and 1970; one registered sale deed, showing purchase of land by her father; certificate of Gaonbura of village Byasa; another certificate of Gaonbura of village Barmara and a certified copy of voter list of 1997.

11. On perusal of the entire evidence on record, the learned Tribunal has found discrepancies as recorded in para 19 of the impugned judgment. In her 1st written statement or in the affidavit filed in support of her said written

statement, the petitioner nowhere mentioned the name of her parents. She also did not mention anything about other voter list, except the voter list of 1966. There is also no mention of any landed property purchased by her father. Similarly in her 2nd written statement, she has nowhere mentioned anything about the voter list of 1997, wherein the name of her husband is said to have been enrolled. She also has not stated anything about appearing the name of her mother or the name of the elder brother of her father in the voter list of 1970. Even, their names have not been mentioned in the written statement.

12. In para 3 of her 3rd and final written statement, the petitioner has stated that names of her father and mother are recorded in the current voter list whereas in her 2nd written statement, she has specifically stated that her father died about 35 years ago, which is self contradictory. In her 3rd written statement, she has also stated that name of her parents are recorded in the voter list of 1997 and that the concerned Gaonbura has issued a certificate showing that her father has a permanent resident of village Bordia. But it is found from the record that no voter list of 1997 showing the name of her father Nowas Kha as a voter is furnished to or proved. The certificate of the Gaonbura of village Byasa shows that Runupa Khatun (not Kanuwa Begum), daughter of Newaz Khan (not Nowaz Kha) is a permanent resident of village Bhogdia (not Bordia). This certificate further shows that Runupa Khatun is the wife of Naskar and not Laskar Ali.

13. As discussed in the impugned judgment, Annexure-1 and Annexure-2 are the certified copies of voter list of 1966 and 1970, respectively of village Bordia. On the other hand, the Annexure-4 is the certificate given by Gaonbura of village Byasa.

14. Noticing the above contradictions, the learned Tribunal having held that the petitioner is not a citizen of India, but a foreigner, this Court exercising its power of judicial review under Article 226 of the Constitution of India, cannot sit on appeal to interfere with the said findings.

15. Needless to say that the High Court exercising its power of judicial review under Article 226 of the Constitution of India cannot sit on appeal over the finding of facts recorded by the Court/Tribunal. It is only when the Court/Tribunal exercise a jurisdiction without being empowered or in excess of it or fails to exercise the vested jurisdiction or acts illegally, the Writ Court exercising its jurisdiction can interfere with the same. The High Court can interfere with the order of the Tribunal exercising its writ jurisdiction only if it is proved that it is a case of no evidence at all or there is error apparent on the face of the record. The power of judicial review under Article 226 of the Constitution is limited only to correction of errors apparent on the face of the records and does not need long drawn out process of reasons on points whether there may be conceivably two views

16. Above apart, as has been held by the Apex Court in L.I.C. of India and

Another Vs. Ram Pal Singh Bisen, , even admission of a document in evidence does not amount to its proof, in other words, mere making of exhibit of a document does not dispense with its proof, which is required to be done in accordance with law. It was the duty of the petitioners to have proved the documents in accordance with law. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amounts to admission of contents but not its truth. Thus, the documents (Photocopies) having not been produced and marked as required under the Evidence Act, cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a Court.

17. In view of the above, I do not find any infirmity in the findings recorded by the learned Tribunal and accordingly the writ petition stands dismissed.

18. Let copies of this judgment and orders be forwarded to Superintendent of Police (B), Barpeta and Deputy Commissioner, Barpeta, for their necessary follow up action of detaining the petitioners in the detention camp till her deportation to her country of origin and also for deletion of her name from the voter lists. Another copy of this judgment be furnished to Mrs. H.M. Phukan, learned State Counsel for her necessary follow up action.

19. The Registry shall transmit the case record immediately to the Tribunal along with a copy of this Judgment. List after one month for furnishing compliance report by the Deputy Commissioner and Superintendent of Police (B), Barpeta.