
(2019) 02 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) No. 7645 Of 2016

Shahera Khatun	Vs	APPELLANT
Union Of India And 4 Ors		RESPONDENT

Date of Decision : 05-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0011

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

Bench : Division Bench

Advocate : H R Ahmed

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. HR Ahmed, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. J Payeng, learned counsel for the State of Assam appearing for the Foreigners Tribunal and Border Areas, Ms. A Verma, learned standing counsel for the authorities under the NRC 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, FT 6th Dhubri Case No. 67/2015 was registered against the petitioner before the Foreigners Tribunal 6th, Dhubri at Bilasipara.

3. Before the Tribunal, the petitioner filed a written statement and had taken the stand that the name of the father of the petitioner appears in the voters list pertaining to village 205 Gutipara Part III. Accordingly, the voters list of 1971 of No.203 Gutipara Part III, PS Bilasipara of Dhubri district was exhibited and also enclosed as Annexure-3 to the writ petition.

4. Voters list of 1971 shows the name of Toser Ali, son of Mandu Sk, aged about 25 years pertaining to House No.88. The petitioner seeks to establish a link with

Toser Ali in the 1971 voters list by projecting the said person to be her father and for the purpose had exhibited a certificate from the Secretary of Gutipara Gaon Panchayat which shows that the petitioner Sahera Khatun is the daughter of Toser Ali of Gutipara Part III. The petitioner had also examined the Secretary of the Gaon Panchayat who in his deposition stated that he had issued the linkage certificate certifying Sahera Khatun is the daughter of Toser Ali and that the certificate was issued as per the voters list of 1966.

5. The evidence led by the Secretary of the Gaon Panchayat satisfies the first requirement of verification of the certificate issued by him.

6. The Supreme Court in paragraph 16 of the Judgment rendered in *Rupajan Begum Vs. Union of India and Others* reported in (2018) 1 SCC 579, has held as follows:

"16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in 16 the illustrative list of documents, as noticed above."

7. From the pronouncement of the Supreme Court in paragraph 16 of *Rupajan Begum* (supra), it can be culled out that the certificate of the concerned Gaon Panchayat Secretary has to be verified in two stages: first is the authenticity of the certificate itself and second is the authenticity of the contents thereof.

8. As regards the authenticity of the contents, the Supreme Court has provided that the verification of the certificate is bound to be an exhaustive process in the course of which the source of information of the facts and other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. In the instant case, the evidence led by the Secretary of the Gaon Panchayat establishes the first stage of verification i.e. with regard to the authenticity of the certificate issued by him. But as regards the second stage of the authenticity of the contents of the certificate, the source of the facts and other details recorded therein is absent in the evidence of the Secretary.

9. As it is the requirement of law to also verify the source of information of the facts and other details recorded in the certificate, we deem it appropriate that for ends of justice, the petitioner be allowed to re-examine the Secretary of the Gaon Panchayat for the purpose limited to the extent of establishing at the

source of the fact and other details recorded in the certificate. It is clarified that for the purpose of re-examination, it will be impermissible for the petitioner to lead any other or further evidence except for the purpose of limiting to verify the source of the facts and other details recorded in the certificate. It is also clarified that upon the matter being remanded back, the petitioner shall not be able to adduce any further evidence other than the examination of the Secretary limited to the extent indicated above.

10. In view of the aforesaid conclusion, the order dated 21.03.2016 of the Foreigners Tribunal No.6, Dhubri at Bilasipara in F.T. 6th Dhubri Case No.67/2015 is set aside.

11. The petitioner shall now appear before the Tribunal on 25.02.2019 and upon his appearance by doing the needful as indicated above, the Tribunal shall give its final opinion as regards the reference made against the petitioner within a period of 30 days thereof.

12. Writ petition is allowed to the extent indicated hereinabove.