
(2009) 12 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition (C) No. 4586 of 2009

Sonajan Nessa

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Citation : (2010) 2 GLD 157

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S. Ali, for the Appellant; H. Rahman, SC, MHA and R. Chakraborty, Addl. Sr. Govt. Advocate for Assam, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—The petitioner, who is aged about 57 years, seeks to establish her Indian citizenship on the basis of the four documents (Annexures-1, 2, 3 and 4) annexed to the writ petition. The first two documents are the voter lists of 1966 and 1970 containing the names of 4 and 5 persons respectively. During the course of hearing, learned Counsel for the petitioner submitted that the person named Sakim Uddin in both the voter lists is her father through whom she claims her Indian citizenship. In paragraph 2 of the writ petition, in support of which the aforesaid two documents have been annexed, it has been stated that the persons named in Sl. No. 137 and 172 of the voter lists is the father of the petitioner.

2. The other two documents which the petitioner has placed reliance in support of her Indian citizenship is the voter list of 1997 containing her name and a certificate dated 7.10.2009, certifying that she is the resident of the particular locality.

3. The petitioner has been declared to be a foreigner by the Foreigners Tribunal, Barpeta in FT Case No. 238/07 (B) (FT Reference No. 3246/2001), vide judgment and order dated 31.8.2009. Being aggrieved, she has invoked the writ

jurisdiction of this Court with the statement in paragraph-1 of the writ petition that she is a citizen of India being the permanent resident of the address furnished in the cause title of the writ petition. Thus, it is not her case that she is an Indian citizen, by birth, or otherwise but claims to be so on the basis of her claim of being the permanent resident of the particular locality.

4. The case against the petitioner and her husband Pantu Mia was registered upon a reference being made by the Superintendent of Police (B), Barpeta. The reference was contested by the petitioner and her husband by filing written statement and documents. While the husband of the petitioner claimed to be an Indian citizen on the basis of two voter lists of 1966 and 1970, purportedly containing the name of his father, the petitioner did not place reliance on such documents but based her claim of being an Indian citizen only on the basis of the 1997 and 2005 voter lists. In the written statement, it was not her case that her predecessors name appeared in any of the voter list prior to the cut off date i.e. 25.3.1971.

5. The Tribunal while believed the 1966 and 1970 voter lists produced by the husband of the petitioner towards establishing his Indian citizenship but in case of the petitioner, her only evidence being the 1997 and 2005 voter list, turned down her claim of being an Indian citizen.

6. Mr. S. Ali, learned Counsel for the petitioner on the basis of the aforementioned Annexures 1 and 2 voter lists, of 1966 and 1970, submitted that the petitioner, now having produced the said two voter lists, containing the name of her father, she is also entitled to get the same relief as that of the her husband, granted by the Tribunal. Mr. H. Rahman, learned Counsel representing the Union of India, Ministry of Home Affairs as well as Ms. R. Chakraborty, learned Addl. Senior Govt. Advocate, Assam, on the other hand submitted that there being no evidence to establish the Indian citizenship of the petitioner, the Tribunal has rightly rejected her claim.

7. I have considered the submission made by the learned Counsel for the parties and the materials on record including the records of the Tribunal. The case of the petitioner alongwith her husband was taken up when doubt arose regarding inclusion of her name in the 1997 voter list. During the course of enquiry, neither the petitioner nor her husband could produce any document to establish their Indian citizenship. Accordingly, the reference was made to the Tribunal.

8. In the written statement filed by the petitioner, the only document in which she placed reliance was the voter list of 1997 and 2005. There was no mention of she being an Indian citizen, by virtue of being a resident of India from prior to 25.3.1971. She also did not establish any linkage to pre-25.3.1971 period. After having failed to establish such linkage, now coming to the writ Court, she has placed reliance on the aforesaid Annexures 1 and 2 voter lists, purportedly containing the name of her father, namely, Sakim Uddin, without however, providing that he is the father of the petitioner.

9. There is nothing to show that the petitioner is the daughter of said Sakim Uddin and also as to why the name of the said Shri Sakim Uddin does not appear in any other voter list. There is also no explanation as to why the name of the petitioner does not appear in any voter list except 1997 and 2005. In 1997 voter list, her age was recorded as 45 years. If that be so, she acquired voting right much prior to that and her name would have been included in many of the voter lists published prior to 1997, had she been an Indian citizen.

10. From the above, there cannot be any manner of doubt that the petitioner is not an Indian citizen. This is as per her own showing in the writ petition. Even in Sakim Uddin is accepted to be her father, same by itself will not establish her Indian citizenship as it is known to all that with a porous border, part of the families remained in Bangladesh while the other part comes to India. There is also no explanation as to why the name of the petitioner is not included in any of the voter lists except 1997 and 2005, although, according to her declared age, her name ought to have appeared in many voter lists including the voter list of 1971 or the voter list published immediately thereafter. There is also nothing to prove that Sakim Uddin is her father. In the written statement filed and documents produced before the Tribunal, no such plea of Sakim Uddin being her father was taken.

11. For all the aforesaid reasons, there is no merit in the writ petition and accordingly it is dismissed.

12. Before parting with the case records, I deem it fit and proper to discuss certain fact relating to the case of the husband of the petitioner. The Tribunal by its impugned judgment and order, while declaring the petitioner to be a foreigner coming to India after 25.3.1971, however, has declared her husband as an Indian citizen, solely on the basis of the voter list of 1966 and 1970, purportedly containing his father's name there. Unfortunately, the Tribunal did not address itself to the most vital question as to whether the particular name appearing in the voter list of 1966 and 1970 is that of his father. The Tribunal also did not address itself to the most vital question as to why the name of the petitioner did not appear in any of the other voter lists except 1997. Considering his age, which was declared to be 57 years, had he been an Indian citizen, his name would have appeared in many other voter list as discussed above. Unfortunately, the Tribunal did not consider all these aspects of the matter and simply on the basis of the two voter lists of 1966 and 1970, purportedly containing the name of the father of the petitioner's husband, declared him to be an Indian national. It also escaped the notice of the Tribunal that neither in the written statement nor in the supporting affidavit, the husband of the petitioner had named his father but he relied upon the 1966 and 1970 voter lists, with the statement in the written statement that the name of his father appeared under Sl. No. 141 of the voter list which is that of Asor Ali followed by the same name in the 1970 voter list. But in the 1997 voter list, the name of the husband of the petitioner is indicated as Asab. In the proceeding before the Tribunal, the father of the petitioner's

husband has been indicated as Asad Ali.

13. During preliminary enquiry when the statement of the petitioner was obtained, he declared his father as Asad Ali. All these aspects of the matter escaped the notice of the Tribunal.

14. In view of the above, it will be advisable for the State Government in the Home Department to challenge the order of the Tribunal declaring the petitioner's husband to be an Indian citizen, which is prima facie not sustainable in law.

15. The writ petition is dismissed with the above observations. The Superintendent of Police (B), Barpeta, shall now take the petitioner into custody immediately and keep her in detention camp/jail custody till such time, deported/pushed back to Bangladesh. The Deputy Commissioner, Barpeta shall ensure deletion of the name of the petitioner from the voter lists.

16. The aforesaid directions shall be complied with as expeditiously as possible, preferably within 29.1.2010, on which date the matter shall be listed again for furnishing compliance report by the Superintendent of Police (B), Barpeta and the Deputy Commissioner, Barpeta.

17. Let copies of this judgment and order be sent immediately to Union of India in the Home Ministry, Superintendent of Police (B), and the Deputy Commissioner, Barpeta and another copy be furnished to Ms. R. Chakraborty, learned State Counsel, Assam, for her necessary follow up action.

18. Registry shall send down the LCR immediately alongwith the copy of this judgment and order.