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IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 114/2018

Smti Puspa Rani Dhar,
Wife of Late Mrinal Kanti Dhar,
(Daughter of Late Hirendra Nath Paul),
Resident of Vill-Babupara, Paulpara,
PS & District-Bongaigaon, Assam,
Pin-783380.

.....*Petitioner.*

-Versus-

- 1.** The Union of India,
represented by the Secretary to the Govt. of India,
Department of Home Affairs,
New Delhi.
- 2.** The State of Assam,
represented by the Secretary to the Government of Assam,
Department of Home Affairs, Dispur, Guwahati-6.
- 3.** The Member, Foreigners' Tribunal No.1,
Bongaigaon, Dist.-Bongaigaon,
Assam, Pin-783380.
- 4.** The Superintendent of Police (Border),
Bongaigaon, PO & District-Bongaigaon,
Assam, Pin-783380.
- 5.** The Deputy Commissioner,
Bongaigaon, PO & Dist.-Bongaigaon,
Assam, Pin-783380.

.....*Respondents.*

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BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MRS. JUSTICE MALASRI NANDI

For the Petitioner: Ms. S. Chakraborty,
Mr. B.J. Mukherjee.Advocates.

For the Respondents: Asstt.S.G.I.,
Ms. A. Verma, SC, FT,
Mr. A. Bhuyan, SC, ECI,
Ms. U. Das, Addl. Sr. GA, Assam,
Ms. L. Devi, SC, NRC.Advocates.

Date of Hearing & Judgment : **10th November, 2021**

JUDGMENT AND ORDER (ORAL)

[N. Kotiswar Singh, J.]

Heard Mr. B.J. Mukherjee, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Asstt. Solicitor General of India for the respondent No.1; Ms. A. Verma, learned special counsel, FT, appearing for respondent Nos.2—4 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.5.

2. The present petition has been filed challenging the impugned order

dated 28.11.2017 passed by the learned Member, Foreigners Tribunal No.1, Bongaigaon, Assam, in BNGN/FT/Case No.2655/2007 by which the petitioner was declared as a foreign national of post 25.03.1971 stream.

3. We have also perused the original records requisitioned. The aforesaid impugned order dated 28.11.2017 reads as follows:-

"FINDINGS & OPINION

As per S.(15) & (16) of S.3(1)F(T) O.1964

(1) The issue brought in the instant reference case **whether the opp is a foreigner?** (The opp is herein after referred to as opp)

(2) The opp contested the case through a written-representation and claimed that the opp is an Indian national. She examined in an affidavit and produced a few documents as exhibits in support of the case. I have heard the case from both sides and perused over the documents produced by the opp. After going through each and every documents relied by the opp, transpired which are as follows:-

(3) The opp's first depended and relied upon document is a certified dtd 31-01-2003 as **Ext-A**. It reveals issued by concerned person of railway authority. But it stands rejected being found, irrelevant.

The opp's next depended document is another certificate marked as Ext-B and it reveals issued dtd. 5th April/1966 claimed that the opp's father Lt. Hirendra Nath Paul got that certificate as a member of some Bengal Medical Union, accepted.

Then **Ext-C, Ext-D, and Ext E** are some voter extracts of **1997, 2005 & 2016**, found in the name of opp, accepted.

Ext-F is another land document of 2008. It reveals totally indistinct and not in a readable condition, hence discarded.

Ext-G is a voter I/D in the name of opp, accepted.

Ext-H is a pan-card, also revealed in the name of opp.

At end of finding, no link of opp found established with the claimed father.

The opp is declared, foreigner and deportable.

OPINION

In the result, I am of the considered opinion is that, the opp is a foreign national of post 25-3-1971 stream and deportable, as per procedure established by law.

With such opinion the case is disposed of, on contest.

Given under my hand & seal of the Tribunal on this the 28th day of Nov/17."

From the above, it is very clear that the learned Tribunal rejected the claim of the petitioner that she is an Indian on reasons which we find hard to accept. Firstly, the learned Trial Court rejected the certificate dated 31.01.2003 issued by the Railway authorities exhibited as Exbt.-A, as irrelevant. The said certificate clearly indicates the name of the petitioner's husband Mrinal Kanti Dhar, who was earlier serving in the N.F. Railway and as per the said certificate, he was born on 01.02.1943 and he was appointed in the Railways on 16.06.1962 and he retired on 31.01.2003. The said certificate also shows the name of the petitioner as the wife having date of birth on 01.01.1952 and also other children, namely, Joysree Dhar, Uday Sankar Dhar, Gita Sree Dhar, Rupa Sree Dhar, Rabi Sankar Dhar and Barun Kanti Dhar.

4. We fail to understand, how the said document can be said to be irrelevant and liable to be rejected. Rather it shows that the petitioner who was married to the aforesaid Mrinal Kanti Dhar, was serving in the Indian Railways and as such, there is a remote possibility of the petitioner being a foreigner and this document will show, in absence of any contrary proof, that in probability

the petitioner would be an Indian as an Indian is most unlikely to marry a foreigner. Secondly, it is to be noted that the learned Tribunal had accepted a certificate issued in Calcutta by the Bengal Medical Union dated 05.04.1966, in which it was certified that one Hirendra Nath Paul whom the petitioner claims to be her father, is a member of the said Union. This document would also indicate that if his father was in Bengal in 1966, this will be a strong corroborative evidence that the petitioner is an Indian. Further, we have also observed that the learned Tribunal had accepted the voters' lists of 1997, 2005 & 2016 relied upon by the petitioner. In the aforesaid voters' lists, the name of the petitioner is shown along with her husband Mrinal Kanti Dhar. The learned Tribunal discarded one land document of 2008 by stating that it is totally indistinct and not in a readable condition. Though in the original, the same is not clearly legible, yet it can be seen that the name recorded in the said land document is Smt. Puspa Rani Dhar, W/O Mrinal Kanti Dhar.

5. We have also gone through the evidence-in-chief of the petitioner and the cross-examination. Apart from seeking mere denials from the petitioner, there is nothing on record to shake the evidence of the petitioner as regards the statements made in the evidence-in-chief. From the records we are, accordingly, satisfied that the petitioner is the wife of one Mrinal Kanti Dhar, who was an employee of the N.F. Railway. The fact remains that the claim of the petitioner that she is the wife of Mrinal Kanti Dhar and also the daughter of

Hirendra Nath Paul has not been shaken, which had been duly proved by her by the aforesaid evidences. The learned Tribunal did not reject any of the aforesaid documents except Exbts.-A and F.

6. As far as Exbt.-A is concerned, we have already held that the same is relevant and cannot be rejected, which shows a clear link between her and her husband. Similarly, as regards Exbt.-F, which is a land document, we are also satisfied that the petitioner's name is shown in the said document along with her husband and the authenticity of the said document has not been questioned and as such, we are of the view that the petitioner has been able to produce sufficient evidence before the learned Tribunal to show that she is an Indian citizen and not a foreigner.

7. Ms. Verma, learned counsel for the State, however, submits that even if the petitioner is declared to be an Indian, she will be required to register herself with the Registering Authority. However, we do not agree with the said submission for the reason that registration of a person arises only when he/she is found to be an illegal entrant to this country from the specified territory between the period of 01.01.1966 and 25.03.1971 and who has been the ordinarily a resident in the State of Assam thereafter, and detected to be a foreigner. In the present case, the petitioner had claimed herself to be the daughter of one Hirendra Nath Paul an Indian, which has been also recorded in the inquiry report and in support of her claim, she had adduced evidence by

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exhibiting Exbt.-B, which clearly shows that Hirendra Nath Paul was a member of the Bengal Medical Union located in Calcutta and which document was duly accepted by the Tribunal. If the aforesaid document is accepted by the Tribunal, in our view, this will be the clinching evidence in favour of the petitioner that she is a daughter of Hirendra Nath Paul who was residing in Bengal during 1966 and as such, she is an Indian in the light of the other evidence adduced by her. Accordingly, we are of the view that the question of registration of the petitioner who is otherwise Indian does not arise as she had been an Indian and not a foreigner at any point of time.

8. Accordingly, for the reasons recorded above, we allow this petition by setting aside the impugned opinion dated 28.11.2017 passed by the learned Member, Foreigners Tribunal No.1, Bongaigaon, Assam, in BNGN/FT/Case No.2655/2007 and declare the petitioner as Indian and not a foreigner.

9. LCR be remitted to the concerned learned Tribunal forthwith.

JUDGE

JUDGE

Comparing Assistant

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