

GAHC010055082019



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C) 1900/2019**

1:NUR BEGUM

WIFE OF SAIJUDDIN AHMED AND DAUGHTER OF RAJEN ALI @ RAJU  
HUSSAIN, RESIDENT OF VILLAGE- HABIGAON, P.O. MISSAMORA, P.S.  
DERGAON, DISTRICT- GOLAGHAT, ASSAM.

VERSUS

1:THE UNION OF INDIA AND 5 ORS.

REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, SHASTRI BHAWAN, TILAK MARG, NEW DELHI.

2:THE ELECTION COMMISSION OF INDIA

GOVT. OF INDIA

NEW DELHI. 2.

3:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
DEPTT. OF HOME

DISPUR

GUWAHATI-6.

4:THE ASSAM STATE COORDINATOR OF NRC

BHANGAGARH

GUWAHATI-5.

5:THE SUPERINTENDENT OF POLICE (B)

GOLAGHAT

DIST.- GOLAGHAT

ASSAM

PIN- 785621

6:THE DEPUTY COMMISSIONER

GOLAGHAT

DIST.- GOLAGHAT

ASSAM

PIN- 78562

**Advocate for the Petitioner : MD. A MATLIB**

**Advocate for the Respondent : ASSTT.S.G.I.**

**BEFORE**  
**HONOURABLE MR. JUSTICE MANOJIT BHUYAN**  
**HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

**O R D E R**

18.02.2020

**(Manojit Bhuyan, J)**

Heard Mr. H.R.A. Choudhury, learned senior counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent no.1. Also heard Ms. B. Das, learned counsel represents respondent no.2; Mr. A. Kalita, learned counsel represents respondent nos. 3, 5 and 6 and Ms. U. Das, learned counsel for respondent no.4.

Petitioner assails opinion dated 24.01.2019 passed by the Foreigners' Tribunal Jorhat, Assam in Case No. FTG(D) 100/2007, declaring her to be a foreigner as per section 2(1)(a) of the *Foreigners' Act, 1946*.

For the purpose of discharging burden as required under section 9 of the *Foreigners Act, 1946* to prove that petitioner is not a foreigner, she exhibited as many as 8 (eight) documents, the particulars of which may be noticed as under :

- (i) Exhibit-1 – School Certificate issued by the Headmaster of Dooria Bagicha High School, P.O.-Dooria, Golaghat, certifying that the petitioner is the daughter of Raju Hussain, inhabitant of Khonikar Bosti who left the school on 31.12.2000 when she was reading in Class-IX and her date of birth is 01.01.1986.
- (ii) Exhibit-2 – Certificate dated 31.08.2014 issued by the Government Gaonburah of Dulia Gaon in the name of Raju Hussain, certifying that the petitioner is the third daughter of Raju Hussain and the petitioner got married in the year 2001 with Saijumuddin Ahmed.
- (iii) Exhibit-3 – Caste Certificate dated 07.06.2000 in favour of the petitioner issued by the Chairman, Sub-Divisional O.B.C. Development Board, Golaghat, certifying that the petitioner is the daughter of Raju Hussain of Habigaon P.O. Rangamati in the district of Golaghat, Assam belongs to Jolha community.
- (iv) Exhibit-4 – Copy of Voter List of 1997, in the name of one Jamila Nisha, aged 60 years, projected as grandmother and one Raju Hussain, aged 45 years, projected as father of the petitioner of village Dulia, P.S. – Debgaon, district- Golaghat, Part No.62 under 96 Khumtai Assam LAC
- (v) Exhibit-5 – Copy of Voter List of 1966, in the name of one Jenurathdin projected as grandfather of the petitioner of village Dulia, P.S. – Debgaon, district- Sivasagar, Part

No.39 under 98 Debgaon LAC.

- (vi) Exhibit-6 – Copy of Voter List of 1966, in the name of one Jamunadin showing relation with one Jenurathdin of village Duliahaon, P.S. – Debgaon, district- Sivasagar, Part No.39 under 98 Debgaon LAC
- (vii) Exhibit-7 – Copy of Jamabandi for surveyed villages which includes Duliagaon village and at Sl. No.6 name of Rajen Ali who is stated to be the projected father of the petitioner is also reflected along with others.
- (viii) Exhibit-8 – Elector Photo Identity Card of one Jahorun Hussain, projected mother of the petitioner.

Petitioner examined herself as DW-1. One Jahurun Begum, projected as mother of the petitioner deposed as DW-2.

Apart from the documents produced and exhibited, as above, no other documents, as admissible in evidence, were brought on record to demonstrate and establish any kind of relationship/linkage to the projected father Raju Hussain, grandfather Janurathdin and grandmother Jamila Nisha. The documents brought on record for the purpose of establishing linkage to the projected father Raju Hussain was the School Certificate at Exhibit-1 issued by the Headmaster of Dooria Bagicha School, where petitioner read upto Class-IX in the year 2000; Certificate at Exhibit-2 issued by the Government Gaonburah of village-Duliagaon in favour of the projected father Raju Hussain by certifying that the petitioner is the daughter of Raju Hussain and the Caste Certificate at Exhibit-3 issued in favour of the petitioner by certifying that the petitioner is the daughter of Raju Hussain and she belongs to Jolha Community. However, all the certificates rendered itself as inadmissible in evidence, inasmuch as, the authors were not examined to prove the Certificates and the contents thereof. Although an argument can be made that since the school in question at Exhibit-1 is a provincialised school and on that account the Certificate is admissible in evidence, we may observe that a document which is found admissible is not the end of the matter. The content of the same has to stand proved through the legal testimony of the Issuing Authority. In the present case the Headmaster of the school in question was not examined to prove the contents of the Certificate. The Voter Lists of 1997, 1966 at Exhibits-4 and 5 reflects the names of the projected grandmother, father and grandfather of the petitioner. At this stage we would observe that reflection of a name in a document is wholly insufficient and without relevance if the proceedee/writ petitioner is unable to connect herself to such entity by means of cogent, reliable and admissible document/evidence. Moreover, the petitioner did not produce a single voter list in her name by showing relationship with the projected parents. The name of the projected father is shown for the first time in the Voter List of

1997 at the age of 45 years. The name of the projected grandmother is shown in the Voter List of 1997 at the age of 60 years but not with the projected grandfather in the Voter List of 1966 at Exhibit-5. Exhibit-6 is of no use for the petitioner as the name of the person appearing in Voter List 1966 is not related to her family. The document brought on record for the purpose of establishing linkage to Rajen Ali is the Jamabandi at Exhibit-7 which, however, did not stand proved by means of any related Sale Deed. Besides, there is no order of mutation showing that name of the petitioner of having inherited the land. The Jamabandi document, thus, has no relevance as it does not serve to link the petitioner with the projected father. Finally the Elector Photo Identity Card at Exhibit-8 remained as a document inadmissible in evidence as it is too well settled that such document is no proof of citizenship.

The statement of DW-2 i.e. Jahurun Begum, who claimed to be the mother of the petitioner, cannot be relied upon in the absence of any documents showing her relationship, either to the projected grandfather, father or to the petitioner herself. Oral testimony of DW-2 alone, sans any documentary support, cannot be treated as sufficient to prove linkage or help the cause of the petitioner. Surprisingly, the petitioner failed to produce a single voter list in her name even until the age of 50 years. We would reiterate that in a proceeding under the *Foreigners Act, 1946* and the *Foreigners (Tribunals) Order, 1964* the evidentiary value of oral testimony, without support of documentary evidence, is wholly insignificant. Oral testimony alone is no proof of citizenship. The evidence of DW-2, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected grandfather, grandmother and father. The petitioner utterly failed to prove her linkage to Indian parents relatable to a period prior to the cut-off date of 25.03.1971 through cogent, reliable and admissible documents.

At paragraph 13 of the writ petition it is stated that petitioner filed an application on 21.01.2019 (Annexure-5 to the writ petition) with a prayer to file additional documents as the petitioner could collect it on 10.01.2019. But the Tribunal did not consider the prayer and in turn directed the police to take her in custody and since 07.01.2019 the petitioner was detained at the Jorhat Detention Camp. Surprisingly, the application is not available in the record nor any order is available recording filing of the application.

As the primary issue in a proceeding under the *Foreigners Act, 1946* and the *Foreigners (Tribunals) Order, 1964* relates to determination as to whether the proceedee is a foreigner or not, the relevant facts being especially within the knowledge of the proceedee, therefore, the burden of proving citizenship absolutely rests upon the proceedee, notwithstanding anything contained in the

*Evidence Act, 1872.* This is mandated under section 9 of the aforesaid Act, 1946. In the instant case and as observed above, the petitioner not only failed to discharge the burden but also utterly failed to make proof of the most crucial aspect, that is, in establishing linkage to her projected parents and/or the grandfather.

On the available materials, we find that the Tribunal rendered opinion/order upon due appreciation of the entire facts, evidence and documents brought on record. We find no infirmity in the findings and opinion recorded by the Tribunal. We would observe that the certiorari jurisdiction of the writ court being supervisory and not appellate jurisdiction, this Court would refrain from reviewing the findings of facts reached by the Tribunal. No case is made out that the impugned opinion/order was rendered without affording opportunity of hearing or in violation of the principles of natural justice and/or that it suffers from illegality on any ground of having been passed by placing reliance on evidence which is legally impermissible in law and/or that the Tribunal refused to admit admissible evidence and/or that the findings finds no support by any evidence at all. In other words, the petitioner has not been able to make out any case demonstrating any errors apparent on the face of the record to warrant interference of the impugned opinion.

On the discussions and findings above, we find no merit in the writ petition. Accordingly, the same stands dismissed, however, without any order as to cost.

Interim protection granted by this Court on 25.03.2019 stands recalled.

Office to send back the case records to the Tribunal forthwith.

A copy of this order be made part of the case records of the Tribunal for future reference.

**JUDGE**

**JUDGE**

**Comparing Assistant**