

GAHC010207652019



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

Case No. : WP(C) 6369/2019

1:RABIA KHATUN
D/O. ABDUL RAHMAN, W/O. KARIM ALI, VILL. RIKAMARI, P.S.
MISSAMARI, DIST. SONITPUR, ASSAM.

VERSUS

1:THE UNION OF INDIA AND 5 ORS.
THROUGH- THE SECRETARY, TO THE GOVT. OF INDIA, THE MINISTRY OF
HOME AFFAIRS, GRIHA MANTRALAYA, SHASTRI BHAWAN, TILAK MARG,
NEW DELHI-110001.

2:THE STATE OF ASSAM
THROUGH- THE COMMISSIONER
AND SECRETARY
TO THE GOVT. OF ASSAM
HOME POLITICAL DEPTT.
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM BHANGAGARH
GUWAHATI-781005.

5:THE DY. COMMISSIONER
SONITPUR

P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN-784001.

6:THE SUPDT. OF POLICE (B)
SONITPUR
P.O. TEZPUR
DIST. SONITPUR
ASSAM
PIN-784001

Advocate for the Petitioner : MR. B CHOWDHURY

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

:: BEFORE ::

HON'BLE MR. JUSTICE MANOJIT BHUYAN
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

28.02.2020

(Manojit Bhuyan, J)

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

Petitioner assails opinion dated 16.05.2017 passed by the Foreigners' Tribunal (8) Sonitpur, Thelamara, Assam in F.T.(8) Case No.600/2016, declaring her to be a foreigner, having illegally entered into Assam on or after 25.03.1971.

For the purpose of discharging burden as required under section 9 of the *Foreigners Act, 1946* to prove that she is not a foreigner, as many as 4 (four) documents were exhibited in support of her case, the particulars of which may be noticed, as under:

- (i) Exhibit-A – Elector Photo Identity Card issued in the name of the petitioner’s projected father Md. Abdul Rahman.
- (ii) Exhibit-B – Electoral Roll of 1965 in the name of the petitioner’s projected grandfather Intaj Ali.
- (iii) Exhibit-C – Marriage Certificate issued in the name of the petitioner by the Gaonburah of village 1 No. Jia Gabhoru, 2 No. Jia Gabhoru, Rikimari Lat, Circle- Thelamara, district- Sonitpur.
- (iv) Exhibit-D – Gaonburah Certificate issued in the name of the petitioner by the Gaonburah of 1 No. Jia Gabhoru, 2 No. Jia Gabhoru, Rikimari Lat.

Besides the documents above, the petitioner did not present for examination any independent witnesses in support of her case. The Electoral Roll of 1965 at Exhibit-B only reflects the name of the petitioner’s projected grandfather. However, no voter lists were produced and exhibited showing the name of the petitioner with her projected father or grandfather as voters. The Elector Photo Identity Card at Exhibit-A cannot be treated as a valid document to prove citizenship in law. Other documents like Marriage Certificate at Exhibit-C and the Gaonburah Certificate at Exhibit-D issued by the same Gaonburah of village 1 No. Jia Gabhoru, 2 No. Jia Gabhoru, Rikimari Lat, rendered itself as inadmissible in evidence, inasmuch as, the said Certificates and the contents thereof did not stand proved through the legal testimony of the issuing authority. Noticeably, the petitioner did not make any endeavour by producing and exhibiting any admissible document or voter list prior to the cut-off date i.e. 25.03.1971 showing existence of her projected father in Indian soil. This is a clear case where the petitioner utterly failed to prove linkage and to discharge the burden, as required of her, under section 9 of the *Foreigners Act, 1946*.

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 father and/or 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 order passed by this Court on 04.12.2019 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