

GAHC010243592019



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

Case No. : WP(C) 7482/2019

1:SAHERA KHATUN
D/O- LATE SAYED ALI, W/O- JAMAL ALI, VILL- KANHARA, P.O-
TUKRAPARA, P.S- CHHAYGAON, DIST- KAMRUP(R), PIN- 781137

VERSUS

1:THE UNION OF INDIA AND 6 ORS
REP. BY THE MIN OF HOME AFFAIRS, NEW DELHI, PIN- 110001

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

3:THE DEPUTY COMMISSIONER
KAMRUP
DIST- KAMRUP
ASSAM
PIN- 781031

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

5:THE STATE COORDINATOR
NRC
ASSAM
GUWAHATI- 781005

6:THE SUPERINTENDENT OF POLICE (B)

KAMRUP
ASSAM

7:THE OFFICER IN CHARGE
CHHAYGAON POLICE STATION
DIST- DHUBRI
PIN- 78112

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

O R D E R

17.02.2020

(Manojit Bhuyan, J)

Heard Ms. H. Ahmed, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent no.1. Also heard Mr. A. Kalita, learned counsel represents respondent nos. 2, 3, 6 and 7; Ms. B. Das, learned counsel represents respondent no.4 and Ms. A. Verma, learned counsel for respondent no.5.

Petitioner assails opinion dated 01.12.2018 passed by the Foreigners' Tribunal No.1, Kamrup (R) in F.T. Case No.19/2018, declaring her to be a foreigner/illegal migrant of post 1971 stream.

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 12 (twelve) documents, the particulars of which may be noticed as under :

- (i) Exhibit-1 – Copy of Voter List of 1966, in the name of one Kadam Ali, projected as grandfather, one Maked Ali, projected as Uncle, one Sayyed Ali, projected as father and one Jaytan Nessa, projected as mother of the petitioner along with others of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.75 under 56 No. Chhaygan

LAC.

- (ii) Exhibit-2 – Copy of Voter List of 1970, in the name of one Kadam Ali, projected as grandfather, one Maked Ali, projected as Uncle, one Sayyed Ali, projected as father and one Jaytan Nessa, projected as mother of the petitioner along with others of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.75 under 56 No. Chhayon LAC.
- (iii) Exhibit-3 - Copy of Voter List of 1977, in the name of one Kadam Ali, projected as grandfather, one Maked Ali, projected as Uncle, one Sayyed Ali, projected as father and one Jaytan Nessa, projected as mother of the petitioner along with others of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.111 under 49 No. Chhayon LAC.
- (iv) Exhibit-4 – Copy of Voter List of 1989, in the name of one Sayat Ali, projected as father and one Jaytan Nessa, projected as mother of the petitioner of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.19 under 49 No. Chhayon LAC
- (v) Exhibit-5 – Copy of Voter List of 1989, in the name of one Sayed Ali, projected as father and one Jaytan Nessa, projected as mother of the petitioner of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.19 under 49 No. Chhayon LAC.
- (vi) Exhibit-6 – Copy of Voter List of 1997, in the name of one Sayed Ali, projected as father and one Jaytan Nessa, projected as mother of the petitioner of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.19 under 49 No. Chhayon LAC.
- (vii) Exhibit-7 – Copy of Voter List of 2005, in the name of one Sayed Ali, projected as father, one Jaytan Nessa, projected as mother, one Safiqul Islam and Mafidul Islam, projected as brothers of the petitioner of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.31 under 49 No. Chhayon LAC.
- (viii) Exhibit-8 – Copy of Voter List of 2017, in the name of one Jaytan Nessa, projected as mother and one Mafidul Islam, projected as brother of the petitioner along with others of village Larujan, P.S. – Chhaygaon, district- Kamrup, Part No.40, under 49 No. Chhayon LAC.
- (ix) Exhibit-9 – School Certificate issued by the Headmaster of Omar Sarkar M.V. School, Kanhara, certifying that the petitioner is daughter of Sayed Ali of village Larujan and date of birth of the petitioner is 02.02.1978.

- (x) Exhibit-10 –Certificate issued by the Gaonburah of Larujan village, certifying that the petitioner is daughter of Sayed Ali.
- (xi) Exhibit-11 – Certificate issued by the Gaonburah of Kanhara village, certifying that the petitioner is wife of Jamal Ali.
- (xii) Exhibit-12 – Affidavit of the petitioner.

Petitioner examined herself as DW-1. One Mafidul Islam, projected as brother of the petitioner deposed as DW-2. One Jaytun Nessa, projected mother of the petitioner after filing evidence did not turn up for cross-examination.

As indicated above, the petitioner projected one Kadam Ali as her grandfather, one Maked Ali as her uncle, one Sayyed Ali as her father, one Jaytun Nessa as her mother and one Mofidul Islam, as her brother, which names appeared in the Exhibits-1, 2, 3, 4, 5, 6, 7 to 8 Voter Lists of 1966, 1970, 1977, 1989, 1993, 1997, 2005 and 2017 respectively. 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. No any voter lists were produced and exhibited reflecting the name of the petitioner by showing relationship with the projected father, mother or brother. The documents brought on record for the purpose of establishing linkage to said Sayyed Ali were the Exhibit-9 issued by the Headmaster of Omar Sarkar M.V. School, where petitioner read upto Class-I in the year 1986 and Exhibit-10 and 11, issued by the Gaonburahs of Larujan and Kanhara villages respectively. 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-9 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 statement of DW-2 i.e. Mafidul Islam, who claimed to be the brother of the petitioner, cannot be relied upon in the absence of any documents showing his relationship, either to the projected grandfather, father of the petitioner or to the petitioner herself. At the time of giving evidence the DW-2 did not produce any documents by way of identification proof that he is Mafidul Islam. The only link put forth in the form of the deposition of DW-2 utterly failed to serve the

purpose. We would observe 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, father and either of the brother. 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.

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.

JUDGE

JUDGE

Comparing Assistant