

WA 357/2015  
BEFORE  
HON'BLE MR JUSTICE UJJAL BHUYAN  
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

JUDGMENT & ORDER (CAV)  
(R.K. Phukan, J)

Heard Mr. A. I. Uddin, learned counsel for the appellant and Ms. G. Sarma, learned Central Government counsel and Mr. M. Bhagawati, learned Government Advocate, Assam.

2. By this appeal the appellant herein has challenged the legality and validity of the Judgment and Order dated 01.03.2012 passed by the learned Member Foreigners Tribunal No.2, Morigaon in F.T.(C) and the judgment and order passed by the learned Single Judge in WP(C)2139 of 2012 vide order dated 07.09.2015.

3. The case of the appellant herein is that she is the daughter of one Yasin Ali and wife of Md. Alimuddin. Referring to the voter list of 1966 & 1970 the appellant has submitted that her father's name appeared in the aforesaid two voter list and she is a citizen of India and permanent resident of Goraimari village under Laharighat Morigaon district, and the name of her father also recorded in No. 84 Laharighat, Constituency of the year 1966, that apart her father has his own landed property.

4. It may be mentioned here that the Superintendent of Police (B) Morigaon, referred the matter to the Foreigners Tribunal with the LVO report raising the question about the nationality of the appellant as she failed to produce documents in support of Indian citizenship while in course of enquiry. It is in response of notice served upon her by the Foreigners Tribunal, she appeared and raised the above contention by submitting written statement as well as by adducing evidence. The learned Tribunal by its judgment and order has declared the appellant as foreigner of post 25th March 1971. The challenge made by the appellant before the Single Judge in the writ petition also failed. Hence, the present appeal has been preferred the appeal against both the above findings, on the ground that the impugned judgment and order is bad in law as they failed to appreciate oral as well as document for the evidence on record in true perspective of law as well as facts.

5. We had given due-consideration to the submission so made by the learned counsel for the parties in this regard and also gone through the order so passed by the learned Tribunal as well as the learned Single Judge, also considered the evidence adduced by the appellant pertaining to the nationality issue.

6. In support of her contention that the appellant is the daughter of one Yasin Ali and wife of Md. Alimuddin, the appellant examined herself and one another person Md. Mofizuddin as DW-2. As admitted by the appellant herself she has three sisters and six brothers and her parents are also alive whose name appeared in the voter list 1966 and 1970, and she has also six children out of her wedlock. But, peculiarly enough the appellant has not produced any of those persons as witness in her case, particularly non-examination of her parents whose name appeared in the voter list is fatal to her case. She has not produced any document regarding her place/date of birth nor could she not submit about the same in her verbal testimony. These aspects of the matter raise serious doubt regarding the authenticity of the documents/voter list so as to connect that the appellant is the daughter of said Yasin Ali. That apart she has not produced any subsequent vot

er list of her parents, other than above two voter list, whereas her parents still alive till the day of her deposition in the year 2012. Over and above no any land document has been produced in support of the contention that they have the landed property.

7. The supporting witness/DW-2 has admitted in his evidence that there was no land in the name of the appellant and her father and he knows about the appellant since after her marriage only.

8. The learned Tribunal after considering all the evidence on record has observed the aforesaid aspect in its judgment, the relevant paragraph is reproduced below:

14. On perusal of record it appears that DW-1 (OP) herself admitted in cross-examination that though she casted vote at village Kalikajari but failed to disclose date and year. Though stated that Yasin Ali is her father but nowhere found in the documents submitted therein, that she is daughter of said Yasin Ali. Moreover no land documents either in the name of her father or her husband's name proved in this proceeding.

15. That DW-2 also admitted that the copies of voter list filed with the proceeding after 1971 that is Ext-Gha voter list of 1989 and Ext-Unga voter list of 1997 and Ext-Cha voter list of 2008. It is also reveals from evidence of DW-2 that Ext-Cha name of O.P. mentioned is Anura Khatoon in Ext-Unga and Ext-Cha mentioned as Anuwara only. As no land documents proved therefore presumption can be made the O.Ps are residing in a Govt. Land. Moreover, the documents filed by O.Ps is side are not duly proved. Though burden of proof lies under Section 9 of the Foreigners Act 1946 (as amended upto date) but opposite party failed to discharge the same. Citizenship cannot be established by production of typed extract of voter list without proving the original as reported by Hon'ble Gauhati High Court in 2011(3) GLT. 684.

9. That on being challenged before the writ court the learned Single Judge duly appreciated the aforesaid findings and discussion of the Tribunal in the following manner:

The learned Tribunal discussing the evidences on record including the aforesaid 2(two) voter list has been held the petitioner to be a foreigner of post 25th March, 1971 stream. It has rightly been held that although the petitioner claimed and/or projected Yasin Ali as her father but she failed to substantiate the said claim by producing any documents/ linkage certificate. The learned Tribunal has rightly rejected the Exahabit-Ga certificate purportedly issued by the village headman. By the said certificate, it was certified that the petitioner, daughter of Md. Yasin Ali, entered into marital tie with one Alimuddin. However, significantly there is no mention as to when she had entered into the said marital tie. As against the typed certificate, there are handwritten insertions in the certificate without any authentication. The certificate was also not produced and exhibited and proved in a manner required under the law of evidence. That apart, the author of the said certificate was also not examined to prove the said certificate. As has been held by the Apex Court in Life Insurance Corporation of India & Anr. Vs- Ram Pal Singh Bisen reported in (2010) 4 SCC 491 that mere filing or accepting a document in Court does not amount to proof of its contents. Admission of documents in Court may amount to admission of its contents but not the truth.

Referring to the documents exhibited by the petitioner, which are all post 1971, the learned Tribunal has rightly held that the said documents apart from not being proved as per the law of evidence, are also insignificant having not established any linkage to pre 25th March, 1971. Even assuming that the name of the petitioner's father is Yasin Ali but having regard to the fact that there is possibility and in fact in numerous occasions similar names are found in the voter lists, a proceedee can easily refer to that similar name so as to project him or he

r as father or mother or even as grandfather and/or grandmother. In the instant case, the petitioner miserably failed to establish that the name projected as her father appearing in the voter lists of 1966 and 1970 is in fact her father. Under Section 9 of the Foreigners Act, 1946, burden of proof is on the proceedee to establish that he/she is an Indian citizen. This aspect of the matter has been elaborately discussed by the Apex Court in Sarbananda Sonowal Vs . Union of India and Ors. Reported in AIR 2005 SC 2920.

10. We are of considered opinion that on the face of evidence on record, there is no illegality or impropriety in appreciation of the matter by the learned Tribunal as well as the learned Single Judge. The question of nationality is to be proved by a proceedee in a reasonable manner with cogent evidence and document to which she failed. Mere filing of documents in a scattered manner without proving the linkage document one cannot claim the nationality that too by birth. The appellant herself failed to make out a case for interference by this Court upon the findings under challenge.

11. Situated thus, the appeal is found devoid of merit and accordingly it stands dismissed.

12. Resultantly, Superintendent of Police (B), Morigaon, is hereby directed to take the appellant into custody and take consequential action for her deportation to the Country of her origin i.e. Bangladesh. The Deputy Commissioner, Morigaon, will ensure the deletion of the name of the appellant from the relevant voter list and either document.

13. Send a copy of this order to the Secretary, Govt. Of India, Ministry of Home Affairs New Delhi; Commissioner Secretary to the Govt. Of Assam, Home Department, Dispur; Superintendent of Police(B) Morigaon; Deputy Commissioner, Morigaon; and a copy of order be also furnished to the learned State counsel Mr. M. Bhagawati, for necessary follow-up action.