

GAHC010208612019



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

Case No. : WP(C) 6697/2019

1:DHILJAN NESSA @ DELJAN NESSA
D/O. KITAB ALI, W/O. SULTAN ALI, R/O. SATRAKANARA, P.S. BAGHBAR,
DIST. BARPETA, ASSAM, PIN-781308.

VERSUS

1:THE UNION OF INDIA AND 7 ORS.
REP. BY THE HOME SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, NEW DELHI-110001.

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

3:THE DY. COMMISSIONER BARPETA
OFFICE OF THE DY. COMMISSIONER BARPETA
DISTRICT.

4:THE SUPDT. OF POLICE (B)
BARPETA
ASSAM
PIN-781314.

5:THE OFFICER IN CHARGE
BAGHBAR POLICE STATION
P.O. BAGHBAR
DIST. BARPETA
ASSAM
PIN-781308.

6:THE STATE COORDINATOR
NRC ASSAM
1ST FLOOR
ACHYUT PLAZA
GUWAHATI SHILLONG ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN-781005.

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

8:THE MEMBER
FOREIGNERS TRIBUNAL NO.4
BARPETA
DIST. BARPETA
ASSAM

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE MANOJIT BHUYAN
HON'BLE MR. JUSTICE HITESH KUMAR SARMA

O R D E R

31.08.2020

(Manojit Bhuyan, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner as well as Ms. G. Hazarika, learned

counsel representing respondent nos.1 and 6. Also heard Mr. J. Payeng, learned counsel represents respondent nos.2, 3, 4, 5 and 8 and Ms. B. Das, learned counsel represents respondent no.7.

Petitioner assails opinion dated 29.04.2019 passed by the Foreigners' Tribunal No.4th, Barpeta in F.T. Case No.493/2016, declaring her to be a foreigner/illegal migrant, having illegally entered in to 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 petitioner is not a foreigner, as many as 10 (ten) documents were exhibited by her, the particulars of which may be noticed as under :

- (i) Exhibit-A – Copy of Voter List of 1966, in the name of one Kitab Ali, projected father of the petitioner and one Karfuljan Nessa, projected mother of the petitioner along with others of village Laharapara Non-K, Part No.109, Sub-Division- Barpeta, P.S.-Tarabari, District-Kamrup, under 54 No. Senga LAC.
- (ii) Exhibit-B – Copy of Voter List of 1971, in the name of one Kitab Ali, projected father of the petitioner and one Karfuljan Nessa, projected mother of the petitioner along with others of village Silochi, Part No.69, Sub-Division- Barpeta, P.S.-Baghbar, District-Kamrup, under 52 No. Baghbar LAC.
- (iii) Exhibit-C - Copy of Voter List of 1997, in the name of one Kitab Ali, projected father of the petitioner of village Shutib Pabo/Boroli/Silochi, Part No.64, P.S.-Baghbar, District-Barpeta, under 45 No. Baghbar LAC.
- (iv) Exhibit-D – Copy of Voter List of 2010, in the name of one Kitab Ali, projected father of the petitioner of village-Silochi, Part No.3, under 45 No. Baghbar LAC.
- (v) Exhibit-G – Copy of Voter List of 1997, in the name of one Sultan Ali projected husband of the petitioner, petitioner herself along with others of village-Satra Kanara, Part No.58, Sub-Division-Barpeta, P.S. Baghbar, District-Barpeta, under 45 No. Baghbar LAC.
- (vi) Exhibit-H – Copy of Voter List of 2005, in the name of one Sultan Ali projected husband of the petitioner, petitioner herself along with others of village-Satra Kanara, Part No.93, under 45 No. Baghbar LAC.
- (vii) Exhibit-I - Certificate dated 04.05.2017 issued by Sarbesh Ali, Gaonburah of village-Aligaon, certifying that petitioner is the daughter of Kitab Ali and the petitioner got married to one Sultan Ali of village Satra Kanara, Seat No.11.
- (viii) Exhibit-J - Certificate dated 17.10.2016 issued by the Gaonburah of village-Satra Kanara, certifying that petitioner is the wife of Sultan Ali of village Satra Kanara, Seat No.11 and she is the inhabitant of the village Satra Kanara.
- vii) Exhibit- Q – Copy of Voter List of 2016, in the name of petitioner, one Dilbar Rahman, projected son of the petitioner along with others of village Satra Kanara (Govindapur Reserve), Sub-Division-Barpeta (Sadar), Part No.108 under Baghbar 45 No. LAC.

- viii) Exhibit- R –_Affidavit filed by the petitioner stating discrepancies in names of the of herself and her father.

Petitioner examined herself as DW-1. One Kitab Ali, projected as father of the petitioner, deposed as DW-2 and one Sarbesh Ali, Gaonburah of village Aligaon, Sargaon Pam, Sar Gaon, deposed as DW-3.

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 either the projected father Kitab Ali or the projected mother Karfuljan Nessa. Though their names are reflected, as shown, in the Voter Lists of 1966, 1971, 1997 and 2010 at Exhibits-A, B, C and D respectively, such reflection of their names is wholly insufficient and without relevance if the proceedee/writ petitioner is unable to connect herself to such entities by means of cogent, reliable and admissible document/evidence. The voter lists with the name of the petitioner are the Exhibits-G and H Voter Lists of 1997 and 2005 of village-Satra Kanara which, however, bore no relevance as her relation is shown with her projected husband and not with the projected father or mother, shown in Exhibits-A, B, C and D. The only document brought on record for the purpose of establishing linkage to Kitab Ali was the Certificate dated 04.05.2017, issued by the Gaonburah of village Aligaon, at Exhibit-I. The Gaonburah of Aligaon village deposed as DW-3. In his testimony the DW-3 stated that he had issued the certificate on verbal request though he never maintained official memo number/reference to issue such type of certificate. In so far as the evidence tendered by DW-2 i.e. Kitab Ali is concerned, the same cannot be relied upon in the absence of any documents showing any relationship between DW-2 and the petitioner. 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. The evidence of DW-2 and DW-3, thus, falls short of being considered as cogent, reliable and admissible evidence, so much so, to establish linkage of the petitioner to the projected parents. An affidavit at Exhibit-R was brought on record to overcome the apparent shortcomings which, however, cannot be taken into consideration, being a self-serving affidavit and not coming within the definition of evidence under the *Indian Evidence Act, 1872*.

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.

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.

We find no merit in the present petition. Accordingly, the same stands dismissed, however, without any order as to cost.

JUDGE

JUDGE

Comparing Assistant