

GAHC010281232019



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

Case No. : WP(C)/8838/2019

NASHIMA @ NASIMA BEGUM
D/O- SULTAN ANSARI, W/O- ALAUDDIN @ ALAUDDIN HALDER, R/O- VILL-
NALANIBARI, P.S- HALEM, DIST- SONITPUR (NOW BISWANATH), ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF POLITICAL
AND HOME AFFAIRS, NEW DELHI

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

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

4:THE CHIEF ELECTION OFFICER
ASSAM
HOUSEFED COMPLEX
BELTOLA ROAD
GUWAHATI- 781006

5:THE ELECTORAL REGISTRATION OFFICER
HALEM SUB DIVISION
DIST- BISWANATH
ASSAM

6:THE DEPUTY COMMISSIONER
 CUM DISTRICT ELECTION OFFICER CUM ELECTORAL REGISTRATION
 OFFICER
 BISWANATH
 P.O AND DIST- BISWANATH
 ASSAM

7:THE SUPERINTENDENT OF POLICE(B)
 BISWANATH CHARIALI
 P.O- BISWANATH
 DIST- BISWANATH
 ASSAM
 PIN- 78416

Advocate for the Petitioner : MS. G BORAH

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

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

ORDER

Date : 29-01-2021

Heard the learned counsel Mrs. G. Borah, appearing for the petitioner. We have also heard Mr. J. Payeng, learned Standing Counsel, FT and Standing Counsel, Border Police, Assam, Ms. G. Hazarkia, learned Central Govt. Counsel for the Union of India as well as the NRC Coordinator and Ms. B. Das, learned counsel for the Election Commission of India.

Challenge in this writ petition under Article 226 of the Constitution of India is to the opinion dated 12.10.2018 passed by the Foreigners Tribunal, 4th Tezpur at Gohpur in F.T (T-4)/GPR, Case No. 888 of 2016, declaring the petitioner to be a foreigner of post 1971 stream.

On the basis of a reference made by the Superintendent of Police, Biswanath, the Tribunal issued Notice to the petitioner asking her to prove her Indian Citizenship. She appeared before the Tribunal and filed a written statement. The petitioner claimed that she was born and brought up at village Mora Chengeli, P.S. - Halem in the Sub-Division of Gohpur,

District - Biswanath. Her father's name is Sultan Ansari @ Sultan Miya. In the year 1998 she got married to Md. Alal Halder @ Allaudin Halder, resident of Village-Nalanibari, P.S. Halem in the Sub-Division of Gohpur, District - Biswanath. According to the petitioner her father's name appeared in the voters lists of 1965 and 1971.

The petitioner studied in Indira Gandhi L.P. School and the Headmaster of the school issued her a certificate displaying the petitioner to be the daughter of Sultan Ansari. In fact this is the only document showing her linkage with Sultan Ansari @ Sultan Miya. For the said purpose the petitioner produced two other documents, namely, a Gaonbura certificate and a certificate issued by the Secretary of the Panchayat. The Gaonbura and the Secretary of the Panchayat were not examined before the Tribunal.

So far as the school certificate is concerned, the Tribunal albeit at the behest of the petitioner, issued summons to the Headmaster, but the Headmaster did not appear before the Tribunal. Therefore, bailable warrant of arrest was issued against the said Headmaster. Finally, the Tribunal issued non-bailable warrant of arrest on 13.11.2017 for securing the presence of the Headmaster of Indira Gandhi L.P. School but police did not execute the said warrant of arrest. On 15.12.2017 and on 18.01.2018 the Tribunal passed two orders asking the I/C(B) Branch, Gohpur to produce the aforesaid Headmaster of the said school but the endeavour of the Tribunal proved to be futile. Therefore, on 16.03.2018 the Tribunal again passed a similar order asking the I/C(B) to execute the warrant of arrest. This time also nothing happened. On several dates subsequent thereto the Tribunal passed different orders for securing the presence of the Headmaster. Finally the Tribunal delivered the opinion without examination of the Headmaster and declared the petitioner to be a foreigner.

Now it is clear on the face of the record that the school certificate issued by the Headmaster of Indira Gandhi L.P. School is the only document to prove the linkage between the petitioner and her projected father Sultan Ansari @ Sultan Miya. There should not be any quarrel with the proposition of fact that the petitioner did not get the opportunity to prove that document.

Citizenship of a person is a valuable right. Section 4 of the Foreigners (Tribunals) Order, 1964 empowers the Tribunal with the powers of a Civil Court trying a suit under the Code of

Civil Procedure, 1908 and the appearance of a Judicial Magistrate, 1st Class under the Code of Criminal Procedure, 1973 in respect of summoning and enforcing the attendance of any person and to examine him or her on oath.

In the case in hand it appears that the Tribunal acted half heartedly while trying to enforce the attendance of the Headmaster of Indira Gandhi L.P. School. We have already mentioned herein before that citizenship of a person is a valuable right and here in this matter the school certificate is the only document to prove the linkage between the petitioner and her father. The petitioner could not prove the school certificate only because of the failure of the Tribunal to enforce the attendance of the Headmaster of Indira Gandhi L.P. School. Therefore, the impugned order suffers from perversity and for this reason alone the impugned order is not sustainable.

We have heard the learned counsels for the parties and have also perused the materials on record. We are of the opinion that for the ends of justice at least one more opportunity should be afforded to the petitioner to contest the police reference on merits. In this view of the matter, we set aside the order/opinion dated 12.10.2018, with direction to the petitioner to appear before the Foreigners' Tribunal-4th, Tezpur at Gohpur on 19.02.2021. It is stated that the petitioner was taken in to custody on 06.05.2019 and is presently lodged at the Tezpur Central Jail. In this situation, we direct the Superintendent of Police (Border), Biswanath to make necessary arrangement to produce the petitioner before the Foreigners' Tribunal-4th, Tezpur at Gohpur on 19.02.2021. On such production and on application made for bail along with documents, the Tribunal shall take steps to release the petitioner on bail. It is expected that the Tribunal will fix the next immediate date within a reasonable time, enabling the petitioner to adduce further evidence. We make it clear that, at any rate, the proceedings before the Tribunal shall be concluded within a period of 45 (forty-five) days from 19.02.2021. We also make it clear that if the petitioner defaults in appearing before the Tribunal on dates to be fixed in the case and also fails to take the required steps, it shall be open to the Tribunal to pass such order or orders as may be deemed fit and proper and in accordance with law.

To the extent above, the writ petition stands allowed.

For the purpose of concluding the reference case within the period specified above, the Tribunal shall act upon the certified copy of this order, which the petitioner is permitted to furnish before the Tribunal on the date of appearance i.e. 19.02.2021. The petitioner is also permitted to supply a copy of this order to the Superintendent of Police (Border), Biswanath, for his doing the needful in terms of the above.

Office to send back the case records forthwith.

JUDGE

JUDGE

Comparing Assistant