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RUPAJAN BEGUM

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 20858 of 2017)

B

DECEMBER 05, 2017

[**RANJAN GOGOI AND R. F. NARIMAN, JJ.**]

- Citizenship Act, 1955 – s. 6A – Assam Panchayat Act, 1994 – Proof of citizenship – Certificate issued by the Secretary of the Village Panchayat in respect of females who have migrated to other villages after marriage – High Court held the certificate to be invalid – On appeal, held: Certificate issued by G.P. Secretary merely acknowledges the shifting of residence of a married woman from one village to another – Certificate by itself and by no means establishes any claim of citizenship of the holder of the certificate –*
- It is only a supporting document – Certificate only enables its holder to establish a link between the holder and the person from whom legacy is claimed – Certificate issued by the G.P. Secretary, by no means, is proof of citizenship – Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established – Certificate has to be verified at two stages, first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof – Order of the High Court insofar as the invalidity of the certificate, is set aside – Certificates would however, be acted upon only to establish a linkage between the holder of such certificate and the person from whom legacy is being claimed – Certificate will be put to such limited use only if the contents of the certificate are found to be established on due and proper enquiry and verification.*

**Partly allowing the appeals, the Court**

- HELD: 1.1** The invalidation of the certificate issued by the Secretary of the Village Panchayat and countersigned by the local revenue official in respect of females who have migrated to other villages after marriage or such certificates issued by jurisdictional circle officers in respect of urban areas, was an agreed document in the matter of processing of claims for inclusion in the updated

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NRC has the effect of affecting a large number of claimants who may have filed their applications for inclusion in the NRC. [Para 3 and 10] [61-E-F] A

1.2 It would appear that the list of illustrative documents including the G.P. Secretary certificate were agreed to by all stakeholders in the process of updation of the NRC and the same also had the approval of the Union Government as well as the State Government pursuant to which instructions were issued to the district level officers in the matter of issuance of such certificate in tune with the required protocol. [Para 13] [64-D] B

1.3 The certificate issued by the Secretary merely acknowledges the shifting of residence of a married woman from one village to another. The said certificate by itself and by no means establishes any claim of citizenship of the holder of the certificate. This is made clear in the illustrative list of documents itself by specifying the same to be only a supporting document. The certificate only enables its holder to establish a link between the holder and the person from whom legacy is claimed. It has been made clear in the several reports of the State Coordinator, NRC, Assam that a claim accompanied by such a certificate, without details of the legacy person, is to be discarded and in the event information as to the legacy person has been furnished, the certificate in question is to be used for the limited purpose of providing a linkage after due enquiry and verification. [Para 15] [64-G-II; 65-A-B] C D E

1.4 The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe it cannot be said why the said certificate should have been interdicted by the High Court, particularly, in the context of the H

- A facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list. The above apart, from a conjoint reading of
- B the provisions of the Assam Panchayat Act, 1994 i.e. Sections 19(1)(vi), 21 and 122, it would appear that directions for issuance of such certificate can come within the ambit of the jurisdiction of the authorities under the Act in which event the view taken by the High Court and the contentions advanced on behalf of the
- C State that the said document is a 'private document' would be legally fragile. [Para 17] [65-B-C]

- 1.5 The order of the High Court insofar as the invalidity of the certificate issued by the G.P. Secretary is concerned is set aside. The certificates issued by the G.P. Secretary/ Executive
- D Magistrate will however be acted upon only to establish a linkage between the holder of such certificate and the person(s) from whom legacy is being claimed. The certificate will be put to such limited use only if the contents of the certificate are found to be established on due and proper enquiry and verification. [Para 18] [65-G-H; 66-A]

- E *Sarbananda Sonowal v. Union of India* (2005) 5 SCC 665 : [2005] 1 Suppl. SCR 472 – referred to.

Case Law Reference

- F [2005] 1 Suppl. SCR 472                      referred to                      Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 20858 of 2017.

- G From the Judgment and Order dated 28.02.2017 by the High Court of Gauhati at Guwahati in Writ Petition (C) No. 2634 of 2016

WITH

Civil Appeal Nos. 20862, 20859, 20861, 20860, 20863 and 20864 of 2017

- H Special Leave Petition (Civil) No. 16441 of 2017.

Ejaz Maqbool, Fuzail Ahmad Ayyubi, Abdul Qadir, Varun Mishra, Raju Ramachandran, M. Shoeb Alam, Fauzia Shakil, Syed Burhanur Rahman, Aminul Islam, Abdul Wadud Aman, Ujjwal Singh, Mojahid Karim Khan, Satya Mitra, Advs for the Appellant. A

M/s. Corporate Law Group, B. Krishna Prasad, Manoj Goel, Shuvodeep Roy, Naman Kamboj, Debojit Baorkakati, Anurag Pandey, Kunwar R. Ratu, Advs for the Respondents. B

The Judgment of the Court was delivered by

**RANJAN GOGOI, J.**

SPECIAL LEAVE PETITION (CIVIL) NO.16441 OF 2017 C

1. List the Special Leave Petition (Civil) No.16441 of 2017 separately.

SPECIAL LEAVE PETITION (CIVIL) NOS.13256/2017, 13259/2017, 13260/2017, 13258/2017, 12647/2017, 13257/2017 AND 28935/2017 D

2. Leave granted in Special Leave Petition (Civil) Nos.13256/2017, 13259/2017, 13260/2017, 13258/2017, 12647/2017, 13257/2017 and 28935/2017.

3. The challenge in this group of appeals is to an order of the Gauhati High Court dated 28<sup>th</sup> February, 2017 by which document No.xiii (i.e. Certificate issued by the Secretary of the Village Panchayat and countersigned by the local revenue official in respect of females who have migrated to other villages after marriage or such certificates issued by jurisdictional circle officers in respect of urban areas) mentioned in the 'illustrative list of documents admissible' as a supporting document has been held by the High Court to be invalid in law and hence of no effect in the process of verification of claims for inclusion in the NRC. The High Court had passed the aforesaid order in a writ proceeding [i.e. Writ Petition (Civil) No.2634 of 2016 (Monowara Bewa @ Manora Bewa Vs. The Union of India & Ors.)] wherein the validity of an order of the Foreigners Tribunal holding the writ petitioner – Monowara Bewa @ Manora Bewa to be a foreigner was in question. The High Court found the contentions advanced in the writ petition to be without any merit and substance and the order of the Tribunal, on the materials before it, holding the writ petitioner – Monowara Bewa @ Manora Bewa to be a foreigner to be justified in law. E  
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A 4. The writ petitioner – Monowara Bewa @ Manora Bewa in  
support of her claim to be an Indian citizen had additionally laid before  
the High Court a certificate issued by the Gaon Panchayat Secretary of  
the kind noticed above. The High Court could have and, in fact, had  
decided the writ petition on the basis of the materials laid before the  
B Tribunal without advertng to the aforesaid certificate and on that basis  
could have terminated the proceedings in question. However, the High  
Court took the view that the question of validity of the certificate issued  
by the G.P. Secretary is of considerable public importance and needed a  
resolution. Accordingly, the High Court after dismissing the writ petition  
on merits went on to answer the aforesaid question terming the same to  
C be a “larger issue”.

5. As the opinion of the High Court holding the said certificate to  
be invalid has the potential of affecting a large number of persons who  
were not before the High Court a series of Special Leave Petitions have  
been filed by such persons before this Court challenging the aforesaid  
D part of the order of the High Court. Leave to file Special Leave Petitions  
has been granted and the grievances raised have been heard.

6. The Appeal arising out of the Special Leave Petition filed by  
the aggrieved writ petitioner before the High Court i.e. Monowara Bewa  
@ Manor: Bewa has also been entertained and heard along with the  
E above group of appeals.

7. We have heard the learned counsels for the parties.

8. A reading of the order of the High Court would go to show that  
according to the High Court the document in question was a means to  
facilitate a claim for inclusion in the NRC by reference to a document  
F which is post 24<sup>th</sup> March, 1971 i.e. cut off date on the basis of which  
citizenship under Section 6A of the Citizenship Act, 1955 is required to  
be determined. The High Court took the view that all the other documents  
listed in the ‘illustrative list of documents admissible’ are prior to the cut  
off date and, therefore, there cannot be any special reason for inclusion  
G of the said document i.e. contemporaneous G.P. Secretary certificate in  
the said list, even as a supporting document. In this regard, the High  
Court took the view that this Court in Sarbananda Sonowal Vs. Union  
of India<sup>1</sup> has held that the State of Assam is facing “external aggression”  
and “internal disturbance” on account of huge influx of illegal

<sup>1</sup>(2005) 5 SCC 665

migrants and keeping in mind the seriousness of the problem the use of the document in question to establish citizenship for inclusion in the updated NRC cannot commend for acceptance. A

9. The High Court also took the view that under the provisions of the Assam Panchayat Act, 1994 issuance of such certificate is not contemplated and/or authorized. Referring to the provisions of the Indian Evidence Act, 1872 the High Court was also of the opinion that as the said certificate is not issued by the G.P. Secretary on the basis of any official records, the same is not a 'public document' and, in fact, the said certificate partakes the character of a 'private document' issued by the G.P. Secretary. The evidentiary value of the same, therefore, is open to serious doubt. It is on the aforesaid broad basis that the High Court thought it proper to invalidate the certificate in question. B C

10. The invalidation of the certificate which was an agreed document in the matter of processing of claims for inclusion in the updated NRC undoubtedly has the effect of affecting a large number of claimants who may have filed their applications for inclusion in the NRC. D

11. It may therefore be necessary to very briefly notice the circumstances in which the illustrative list of documents including the certificate of the G.P. Secretary appearing at Serial No.13 of the said list had come into existence. E

12. A set of modalities for preparation of the NRC was formulated by the State Government through a Cabinet sub-committee. The sub-committee which was initially constituted on 3<sup>rd</sup> August, 2010 had been reconstituted from time to time. The modalities were discussed after several rounds of deliberations with various stakeholders including All Assam Students' Union ("AASU") and 26 Ethnic Unions as well as All Assam Minorities Students' Union ("AAMSU"). The list of documents were part of the aforesaid modalities which after being finalized by the State Government were sent to the Government of India on 5<sup>th</sup> July, 2013. The approval of the Union Government of the said modalities was communicated by a letter dated 22<sup>nd</sup> November, 2014 of the Union Home Secretary addressed to the Chief Secretary of the Government of Assam. After the aforesaid approval of the Union Home Secretary, the State Coordinator (NRC) informed the Registrar General of India of the decision of the Union Government and sought instructions of the said Authority, i.e., R.G.I. with regard to issuance of such certificates. This F G H

A was communicated by a letter dated 9<sup>th</sup> April, 2015 of the State  
 Coordinator. In response to the said letter, the R.G.I. by communication  
 dated 5<sup>th</sup> May, 2015 approved the format of the certificate(s) to be issued  
 by the G.P. Secretary/Executive Magistrate. Thereafter, the State  
 Coordinator by a communication issued on the same day i.e. 5<sup>th</sup> May,  
 B 2015 informed all the Deputy Commissioners of the States of the decision  
 of the R.G.I. and the approval of the format of the certificates that are to  
 be issued by a G.P. Secretary in rural areas and Executive Magistrate in  
 the urban areas for married women migrating to a new place on account  
 of marriage. The required protocol to be followed in issuing such  
 certificates was also communicated by the said letter of the Coordinator  
 C dated 5<sup>th</sup> May, 2015.

13. From the above it would appear that the list of illustrative  
 documents including the G.P. Secretary certificate were agreed to by all  
 stakeholders in the process of updation of the NRC and the same also  
 had the approval of the Union Government as well as the State  
 D Government pursuant to which instructions were issued to the district  
 level officers in the matter of issuance of such certificate in tune with  
 the required protocol.

14. The exercise in question was undertaken by the High Court to  
 consider an issue not strictly arising in the proceedings before it. Resolution  
 E of the issue was not indispensable for answering the writ petitions under  
 consideration of the High Court. The issue had the potential of affecting  
 the large number of citizens who were not before the High Court. No  
 notice under the provisions of Order I rule 8 of the Code of Civil  
 Procedure, 1908 was also issued to enable the persons likely to be affected  
 to contest the matter in a representative capacity. Though, the order of  
 F the High Court insofar as the issue of the validity of the certificate is  
 liable to be interdicted on the above basis alone, we are of the view that  
 we should proceed further in the matter and record our views on the  
 issue of validity of the certificate in question to dispel all doubts in the  
 matter and to avoid any further litigation on the issue.

G 15. The certificate issued by the G.P. Secretary merely  
 acknowledges the shifting of residence of a married woman from one  
 village to another. The said certificate by itself and by no means establishes  
 any claim of citizenship of the holder of the certificate. This is made  
 clear in the illustrative list of documents itself by specifying the same to  
 be only a supporting document. The certificate in question only enables  
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its holder to establish a link between the holder and the person from whom legacy is claimed. It has been made clear in the several reports of the learned State Coordinator, NRC, Assam that a claim accompanied by such a certificate, without details of the legacy person, is to be discarded and in the event information as to the legacy person has been furnished, the certificate in question is to be used for the limited purpose of providing a linkage after due enquiry and verification.

16. The certificate issued by the G.P. Secretary, by no means, is proof of citizenship. Such proof will come only if the link between the claimant and the legacy person (who has to be a citizen) is established. The certificate has to be verified at two stages. The first is the authenticity of the certificate itself; and the second is the authenticity of the contents thereof. The latter process of verification is bound to be an exhaustive process in the course of which the source of information of the facts and all other details recorded in the certificate will be ascertained after giving an opportunity to the holder of the certificate. If the document and its contents is to be subjected to a thorough search and probe we do not see why the said certificate should have been interdicted by the High Court, particularly, in the context of the facts surrounding the enumeration and inclusion of the documents mentioned in the illustrative list of documents, as noticed above. In fact, the said list of illustrative documents was also laid before this Court in the course of the proceedings held from time to time and this Court was aware of the nature and effect of each of the documents mentioned in the list.

17. The above apart, from a conjoint reading of the provisions of the Assam Panchayat Act, 1994 i.e. Sections 19(1)(vi), 21 and 122, it would appear that directions for issuance of such certificate can come within the ambit of the jurisdiction of the authorities under the Act in which event the view taken by the High Court and the contentions advanced on behalf of the State that the said document is a 'private document' would be legally fragile.

18. For all the aforesaid reasons we set aside the order of the High Court insofar as the invalidity of the certificate issued by the G.P. Secretary is concerned and allow the present appeals to the above limited extent. We make it clear that the certificates issued by the G.P. Secretary/ Executive Magistrate will however be acted upon only to establish a linkage between the holder of such certificate and the person(s) from whom legacy is being claimed. The certificate will be put to such limited

- A use only if the contents of the certificate are found to be established on due and proper enquiry and verification.

19. Civil Appeal arising out of Special Leave Petition (Civil) No.12647 of 2017 will now be listed before the appropriate Bench for disposal on merits so far as the order of the High Court holding the writ

- B petitioner – appellant (i.e. Monowara Bewa @ Manora Bewa) to be a foreigner is concerned.

Nidhi Jain

Appeal partly allowed.