

GAHC010238532019



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

Case No. : WP(C) 7451/2019

1:JABEDA BEGUM @ JABEDA KHATUN
W/O. REKEK ALI, VILL. GUWAHARI, P.O. AND P.S. TAMULPUR, DIST.
BAKSA, BTAD, ASSAM.

VERSUS

1:THE UNION OF INDIA AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF INDIA, HOME AFFAIRS
DEPTT., NEW DELHI-01.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-01
INDIA.

4:THE STATE CO-ORDINATOR
NRC
ASSAM.

5:THE DY. COMMISSIONER
BAKSA
DIST. BAKSA
ASSAM
PIN-781367.

6:THE SUPDT. OF POLICE (B)
BAKSA
DIST. BAKSA
ASSAM
PIN-781367

Advocate for the Petitioner : MR A ALI

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

:::BEFORE:::

HON'BLE MR. JUSTICE MANOJIT BHUYAN

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER (ORAL)

12.02.2020

(P.J. Saikia, J.)

In this writ petition, the petitioner Jabeda begum @ Jabeda Khatun has challenged the opinion dated 31.05.2019, passed by the Foreigners' Tribunal, Baksa, Tamulpur, Assam, in F.T. Case No. 22/BAKSA/2018, declaring her to be a foreigner of post 1971 stream.

Heard the learned counsel, Mr. A. Ali, appearing for the petitioner. Also heard Ms. G. Hazarika, learned CGC, representing respondent No. 1; Ms. B. Das, learned Standing Counsel, Election Commission, representing respondent No. 3; Mr. J. Payeng, learned Standing Counsel, Foreigners Tribunal, representing respondent Nos. 2, 5 & 6; and Ms. A. Verma, learned Standing Counsel, NRC, representing respondent No. 4.

On the basis of a reference made by the Superintendent of Police (B), the Foreigners Tribunal, Baksa, Tamulpur, Assam, issued notice to the petitioner asking her to prove her Indian citizenship. The petitioner appeared before the Tribunal and filed her written statement along with some documents claiming to be a citizen of India by birth. According to the petitioner, she was born to Lt. Jabed Ali and Jahura Khatun @ Jahera Kharan, the projected father and mother of the petitioner, respectively at Bangalpara. She has stated that the names of her parents appeared in the Voter List of 1966. She claimed that even the names of her grandparents had appeared in the Voter List of 1966. The petitioner further stated that her father's name appeared in the Voter lists of 1970 & 1997 also. The petitioner claimed that due to river embankment erosion, her father had shifted from Bangalpara to No. 2 Dongoragaon and lived there till his death. She stated that the names of her parents and two brothers, namely, Samsul Ali and Insal Ali also appeared in the Voter List of 2015. The petitioner has disclosed that in fact she has three brothers, namely, Insan Ali, Khairul Ali & Samsul Ali, and two younger sisters, namely, Morjina

Begum and Taravanu Begum. According to the petitioner, she was married to Md. Rejak Ali of the same village and thereafter, her name appeared in the Voter Lists of 2008. She has stated that in the year 1997 also, her name appeared in the Voter List but it was marked as “D” Voter.

In support of her contention, the petitioner filed 14 (fourteen) numbers of documents. They are –

- 1) Exhibit-A is the NRC details of Javed Ali;
- 2) Exhibit-1 is the Voter Lists of 1966;
- 3) Exhibit-2 is the Voter Lists of 1970;
- 4) Exhibit-3 is a Land Revenue Paying Receipt;
- 5) Exhibit-4 is the Voter Lists of 1997;
- 6) Exhibit-5 is the Voter Lists of 2015;
- 7) Exhibit-6 is a Land Revenue Paying Receipt;
- 8) Exhibit-7 is another Land Revenue Paying Receipt;
- 9) Exhibit-8 is another Land Revenue Paying Receipt;
- 10) Exhibit-9 is a certificate of Gaon Bura certifying that Md. Javed Ali is a permanent resident of Village No. 2 Dongergaon;
- 11) Exhibit-10 is another certificate of Village Gaon Bura certifying that the petitioner being the daughter of Lt. Javed Ali was married to Rejak Ali;
- 12) Exhibit-11 is a copy of Ration Card in the name of the petitioner;
- 13) Exhibit-12 is the Bank Passbook;
- 14) Exhibit-13 is the PAN Card of the petitioner; and
- 15) Exhibit-14 is another bank document of the petitioner.

The Tribunal rejected Exhibits 9 & 10 on the basis of the fact that Gaon Buras are not entitled to issue certificate supporting the citizenship of a person. The Tribunal also rejected Exhibit-13 on the ground that it has not been proved. Finally, the Tribunal held that the petitioner failed to file documents linking herself with her projected parents.

We have carefully gone through the opinion of the Tribunal. Ordinarily, we would not have gone into the evidence because of Writ Court exercising powers under Article 226 of the Constitution of India does not work as an Appellate or Reviewing authority. A Writ Court will interfere when there is perversity in the decision of the Tribunal.

In the instant case, the petitioner claimed that she is the daughter of Lt. Javed Ali and Jahura Khatun @ JaheraKharan. She could not file any documents to link herself with her projected parents.

Certificates issued by a Village Gaon Bura can never be the proof of citizenship of a person. Such certificate can only be used by a married woman to prove that after her marriage, she had shifted to her matrimonial village [*Rupjan Begum Vs. Union of India*, reported in (2018) 1 SCC 579].

This Court in *Md. Babul Islam Vs. Union of India* [WP(C)/3547/2016], has already held that PAN Card and Bank documents are not proof of citizenship.

Md. Samsul Ali, the projected brother of the petitioner, adduced evidence before the Tribunal. He claimed to be 33 years old and his name appeared in the Voter List of 2015. The petitioner could not file any documents to link herself with her projected brother, Md. Samsul Ali.

Land Revenue Paying Receipts do not prove a citizenship of a person. Therefore, we find that the Tribunal has correctly appreciated the evidences placed before it and we could find any perversity in the decision of the Tribunal.

That being the position, we would reiterate that the petitioner failed to prove her linkage with her projected parents and her projected brother. Therefore, we find that this writ petition is devoid of merit and accordingly, we dismiss the same.

The writ petition is disposed of accordingly.

JUDGE

JUDGE

Comparing Assistant