

GAHC010202822018



2025:GAU-AS:4816

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

Case No. : WP(C)/6352/2018

AKLIMA KHATUN
W/O. LT. ALIM UDDIN, VILL. BALARCHAR, P.S. MERERCHAR, DIST.
BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILAK MARG, NEW DELHI-110001.

2:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

4:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZEN
G.S. ROAD
BHANGAGARH
GUWAHATI-781005.

5:THE MEMBER

FOREIGNERS TRIBUNAL
BONGAIGAON NO.2
AT ABHAYAPURI
BONGAIGAON
ASSAM.

6:THE SUPDT. OF POLICE (B)

BONGAIGAON
ASSAM-783380.

7:THE DY. COMMISSIONER

BONGAIGAON
ASSAM-783380

Advocate for the Petitioner : MR. MD S HOQUE, MS. A BORUAH,MR. M DEKA

Advocate for the Respondent : ASSTT.S.G.I., SC, NRC,SC, ECI,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT & ORDER (CAV)

Date : 23-04-2025

(M. Nandi, J)

Heard Mr. Md. S. Hoque, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned Standing Counsel, FT matters, Mr. P. Sarmah, learned Government Advocate and Mr. M. Islam, learned counsel appearing on behalf of Mr. A.I. Ali, learned Standing Counsel, ECI.

2. By filling this application under Article 226 of the Constitution of India, the petitioner has challenged the impugned opinion dated 20.01.2018, passed by the learned Member, Foreigners' Tribunal, Bongaigaon No.2, Abhayapuri in F.T.

Case No.224/2016, declaring the petitioner as foreigner/illegal migrant of post 25.03.1971.

3. On the basis of the reference made by the Superintendent of Police (B), Bongaigaon vide reference no. BNGN/P.E No.180/2008, an investigation was conducted and subsequently, it was reported that petitioner is a foreigner who had entered into India from Bangladesh after 25.03.1971. Accordingly, SP (B), Bongaigaon sent the reference for opinion of the Tribunal.

4. On receipt of the notice from the Tribunal, the petitioner contested the reference and by filing written statement contended that she is the citizen of India by birth. It is stated in the written statement that the petitioner is the daughter of late Moksed Ali, son of Nasher Dewani and her mother's name is Rabeya Khatun. After attainment of majority, the petitioner got married with her cousin Alimuddin, son of Koser Uddin @ Koser Ali. Her name is recorded in the voter lists of 1985, 1997, 2016 as wife of Alimuddin. It is also stated in the written statement that the petitioner as a daughter of late Moksed Ali, inherited a plot of land which was possessed by her deceased father during his lifetime. The father of the petitioner expired in the year 2006 and her mother is still alive and residing at village Balarchar under Abhayapuri P.S under Bongaigaon district.

5. The petitioner also submitted her evidence-on-affidavit and reiterated the same thing whatever stated in her written statement. The petitioner also exhibited some documents i.e. NRC 1951 vide **Ext.1**, voter list of 1966 vide **Ext.2**, voter list of 1970 vide **Ext.3**, voter list of 1985 vide **Ext.4**, voter list of 1997 vide **Ext.5**, voter list of 2006 vide **Ext.6**, voter list of 1985 vide **Ext.7**, voter

list of 1997 vide **Ext.8**, voter list of 2016 vide **Ext.9**, voter ID of the petitioner vide **Ext.10**, certificate issued by President & Secretary of Gaon Panchayat vide **Ext.11**, copy of *jamabandi* vide **Ext.12**.

6. In her cross-examination, the petitioner as DW-1 replied that Nasher Dewani is her grandfather. Her father's name is Moksed Ali. Koser Uddin is her uncle. She has only one uncle. She did not know Baser Uddin whose name is included in the Electoral Roll of 1970 along with her father. She has only one uncle and his name is Koser Uddin. In 1985, she had casted her vote for the first time at Balarchar. She did not know Jahanara whose name was included along with her name in the Electoral Roll of 2016.

7. Learned counsel for the petitioner has argued that although the petitioner had adduced sufficient evidence along with the exhibited documents in support of her claim of Indian citizenship but the learned Member, Foreigners' Tribunal without taking into consideration of the documents adduced by the petitioner, had declared the petitioner as an illegal migrant of post 25.03.1971 on the basis of minor discrepancies in her father's name and age in the voter lists.

8. Further submission of learned counsel for the petitioner is that the learned Tribunal picked up some minor discrepancies in her grandparent's name in written statement and evidence which are not having any material bearing when she has the public documents like NRC 1951, voter list of 1966 and 1970. According to the learned counsel for the petitioner, the voter lists are the public documents which are not required to be proved by calling the author of the same as witness as per provision of Section 35 and 74 of the Evidence Act.

9. It is also submitted that the case was referred without conducting fair investigation, without asking for any documents, without visiting her house and without interrogation. Her father's and husband's name were recorded after verification but the same was referred to the learned Member, FT for registering a case against the petitioner doubting her citizenship.

10. By referring the judgment of ***Sarbananda Sonowal Vs. Union of India***, reported in ***(2007) 1 SCC 174***, it was pointed out by the learned counsel for the petitioner that the Apex Court in the said judgment held that adequate care shall be taken to see that no genuine citizen of India is thrown out of the Country. A person claiming citizenship in terms of the Constitution or Citizenship Act, is entitled to all safeguards, both substantive and procedural to show that he/she is a citizen of India.

In view of the aforesaid submission, the learned counsel for the petitioner prays to set aside the impugned opinion dated 20.01.2018 passed by the learned Member, Foreigners' Tribunal, Abhayapuri in F.T Case No.224/2016.

11. In response, the learned counsel for the FT matters, supports the opinion passed by the Tribunal and contends that having regard to the facts and circumstances of the case, the opinion rendered by the Tribunal is a plausible one. Tribunal has recorded the finding of fact on appreciation of the materials on record. Therefore, the writ court may not interfere with such a finding of fact recorded by the Tribunal.

12. Proceeding to the documents submitted by the petitioner to prove her citizenship, vide **Ext.1** which is NRC certificate 1951 issued by Officer-in-Charge, Abhayapuri P.S dated 28.09.1985. This Court in a judgment vide **WP(C) 6090/2016 [Abdul Mojid @ Mojid Ali Vs. Union of India and others]** has held that the NRC document is not permissible nor shall be of any legal assistance to the proceedee. The relevant para is reproduced as follows –

"11. Ext.1 is stated to be a true copy of National Register of Citizens (NRC), 1951 issued by the Deputy Superintendent of Police (Border), Dhubri on 17.10.1985 containing the names of Haru Dewani, Belaton Nessa, Madan Sheikh (Matin) and Hanif Shekih. NRC, 1951 was prepared on the basis of the [Census Act, 1948](#). As per [Section 15](#) of the Census Act, 1948, record of census are not open to inspection and thus not admissible in evidence. Therefore, in [Bhanbhasa Sheikh Vs. Union of India](#), 1970 Assam LR 206, a Single Bench of this Court categorically held that NRC extracts produced to prove domicile in India is not admissible in evidence for any purpose. We are in complete agreement with the views expressed by the learned Single Judge in [Bhanbhasa Sheikh](#) (supra). Therefore, Ext.1 is no evidence in the eye of law."

As such, in view of the above, **Ext.1** cannot be taken into consideration regarding citizenship of a person.

13. According to the petitioner, she is the daughter of one Moksed Ali, son of Naser Ali and her mother is Rabeya Khatun and their names appeared in the

voter lists of 1966, 1970, 1985, 1997 and 2006. Vide **Ext.2**-1966 voter list, the name of Naser Ali, who is the grandfather of the petitioner, has appeared who was the son of one Kojar Ali. In **Ext.3** - 1970 voter list, the father's name of Naser Ali has appeared as Fojor Ali. In **Ext.4**-1985 voter list, the name of petitioner's projected father Moksed Ali has appeared, son of Nosher Haji. Vide **Ext.5** - 1997 voter list, the father of Moksed Ali was shown as late Haji Nasher Ali.

14. In 1966 voter list, the age of the petitioner's father i.e. Moksed Ali was shown as 30 years and Rabeya Khatun as 21 years and in 1970 as 34 and 25 years of age respectively. After 1970, there is a big gap of 15 years and the petitioner did not show any ground why she failed to produce any voter list of her parents though they were alive during that period. Subsequently, in 1985 voter list, the name of Moksed Ali and his wife Rabeya Khatun have appeared showing their age as 55 and 50 respectively, which should have been 49 and 40.

15. The fourth voter list produced by the petitioner is 1997 voter list i.e. after 12 years but the age of her projected father Moksed Ali was shown as 58 years and her mother as 49 years. It is interesting to note that 2006 voter list reduced the age of the father of the petitioner as 55 years. **Ext.7** is the voter list of 1985, wherein the name of one Aksima has appeared as W/o Alimuddin. **Ext.8** and **Ext.9** are the voter lists of 1997 and 2016 showing the name of the present petitioner as W/o Alimuddin. It is also reflected that in the voter list of 2016, the name of one Jahanara Khatun has appeared against the same house no. 224 of village-Balarchar under Abhayapuri P.S. However, the petitioner in her cross-examination stated that she did not know who is Jahanara Khatun.

16. The petitioner also stated in her evidence-on-affidavit that as a legal heir of her father, she inherited a landed property and accordingly, her name was mutated in *jamabandi* vide **Ext.12**. As per **Ext.12**, vide order of Circle Officer dated 12.08.2016, in Mutation case No.406/2016-2017, the land vide Dag no.13 was mutated in the name of Hasem Ali, S/o Moksed Ali and Aklima Khatun, D/o Moksed Ali.

17. It transpires that the document submitted by the petitioner vide **Ext.12** is post 25.03.1971 document. Apart from that along with Aklima Khatun, one Hasem Ali, S/o Moksed Ali was also mutated by inheritance. But the petitioner nowhere stated that she has one brother, Hasem Ali by name. As per voter list of 1985, name of one Arjal was shown as son of Moksed Ali against the same house no.135 of village- Balarchar and in the voter list of 1997 and 2006, the name of one Amzad Hussain has appeared as son of Moksed Ali. On perusal of the written statement as well as the evidence of the petitioner, it is nowhere reflected that Arjal or Amzad Hussain are the brothers of the petitioner. In **Ext.12 - jamabandi**, being the legal heirs of Moksed Ali, projected father of the petitioner, names of Arjal or Amzad Hussain have not been included. Under such backdrop, it is difficult to accept the documents as aforesaid to prove the citizenship of the petitioner.

18. Above are the documents on the basis of which the petitioner wants to prove her Indian citizenship that too by birth. In the evidence adduced by the petitioner, she has only referred to the aforesaid documents and nothing else. No other witness was examined by the petitioner in support of her case. The certificate issued by the President & Secretary of Gaon Panchayat vide **Ext.11** is of no consequence as the said certificate only certifying that the person named

therein are permanent resident of a particular village.

19. In ***Sarbananda Sonowal Vs Union of India***, reported in **(2005) 5 SCC 665**, the Apex Court while discussing the problem being faced by the State of Assam due to illegal migration and their continued presence in the State has been vividly discussed the alarming situation. While striking the IM(D)T Act 1983, the Apex Court also dealt with modality of proving one's Indian citizenship. It has been emphasized that the burden of proof is always on the proceedee as per provisions of Section 9 of the Foreigners Act, 1946. In *Sarbananda Sonowal (Supra)*, the Apex Court dealing with the burden of proof made the following observation –

“26. There is good and sound reason for placing the burden of proof upon the person concerned who asserts to be a citizen of a particular country. In order to establish one's citizenship, normally he may be required to give evidence of i) his date of birth ii) place of birth iii) name of his parents iv) their place of birth and citizenship. Sometimes the place of birth of his grandparents may also be relevant like under Section 6-A (1)(d) of the Citizenship Act. All these facts would be necessarily be within the personal knowledge of the person concerned and not of the authorities of the State. After he has given evidence on these points, the state authorities can verify the facts and can then lead evidence in rebuttal, if necessary. If the State authorities dispute the claim of citizenship by a person

and assert that he is a foreigner, it will not only be difficult but almost impossible for them to first lead evidence on the aforesaid points. This is in accordance with the underlying policy of Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

20. Situated thus, merely by producing some documents like voter list or Gaon Panchayat certificate, one cannot establish her Indian citizenship. Even in case of production of certified copies of the documents, something more is required as per the law of evidence. The learned Tribunal has discussed all the above aspects of the matter in the impugned opinion. It has rightly been observed by the Tribunal regarding discrepancy in the name of the grandfather of the petitioner in the voter list as well as age of the parents of the petitioner.

21. Needless to say that the High Court exercising its power of judicial review under Article 226 of the Constitution of India cannot sit on appeal over the finding of facts recorded by the Court/ Tribunal. It is only when the Court/Tribunal exercises a jurisdiction without being empowered or in excess of it or fails to exercise the vested jurisdiction or acts illegally, the writ court exercising its jurisdiction can interfere with the same. The High Court can interfere with the order of the Tribunal exercising its writ jurisdiction only if it is proved that it is a case of no evidence at all or there is error apparent on the face of the record. The power of judicial review under Article 226 of the Constitution is limited only for correction of errors apparent on the face of the records and does not need long drawn out process of reasons on points whether

there may be conceivably two views.

22. In the instant case, in view of the aforesaid anomalies as discussed above, we do not find any infirmity in the impugned opinion requiring any interference by this Court exercising its power of judicial review under Article 226 of the Constitution of India.

23. In the result, the writ petition is dismissed. There shall be no order as to costs.

24. With the above observation, the writ petition is disposed of.

25. Transmit the records to the Tribunal.

JUDGE

JUDGE

Comparing Assistant