

GAHC010172162018



2025:GAU-AS:5931

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

Case No. : WP(C)/5564/2018

ASIA KHATUN @ ASIA BEWA
W/O. LT. ABDUL MALEK, VILL. DALGAON KHUTI, P.O. AND P.S. DALGAON,
DIST. DARRANG, ASSAM-784124.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY ITS SECRETARY, DEPTT. OF HOME, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. DEPTT. OF HOME
DISPUR
GUWAHATI
ASSAM-06.

3:THE CHIEF ELECTORAL OFFICER

ASSAM
DISPUR
GHY.-06.

4:THE STATE COORDINATOR

NATIONAL REGISTRAR OF CITIZEN
ASSAM
DISPUR
GUWAHATI-06.

5:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN ASOKA ROAD

NEW DELHI-01.

6:THE MEMBER

FOREIGNERS TRIBUNAL NO.5
DARRANG-784125.

7:THE DISTRICT ELECTION OFFICER

DARRANG
ASSAM-784125.

8:THE SUPDT. OF POLICE (B)

DARRANG
ASSAM-784125

Advocate for the Petitioner : MR. I ALAM, MR. T SK

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

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MRS. JUSTICE MALASRI NANDI

For the petitioner : Mr. T. SK. Advocate.

For respondent No.1 : Mr. D. J. Das, CGC

For respondent Nos. 2, 4
and 8 : Mr. G. Sarma, SC, FT

For respondent Nos. 3 and 7 : Mr. H. K. Hazarika, learned
Govt. Advocate.

For respondent No.5 : Mr. A.I. Ali, SC, ECI.

Date of hearing : 05.03.2025.

Date of judgment : 14.05.2025.

JUDGMENT AND ORDER

(CAV)

(K. R. Surana, J)

Heard Mr. T. Sk, learned counsel for the petitioner. Also heard Mr. D.J. Das, learned CGC for respondent no.1; Mr. G. Sarma, learned standing counsel for the respondent nos. 2, 4 and 8; Mr. M. Islam, learned counsel, appearing on behalf of the leaned standing counsel for 5; and Mr. H. K. Hazarika, learned Govt. Advocate for respondent No. 3 and 7.

2. The learned Member, Foreigners Tribunal No. (5th), Darrang, Mangaldai, which is arrayed as respondent no.6, is neither a necessary nor a proper party in this writ petition. Accordingly, the name of respondent no.6 is ordered to be struck off.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 29.06.2018, passed by the learned Member, Foreigners Tribunal (5th), Darrang, Mangaldai in Case No. F.T. (V) 1846/2016, arising out of S.P. Enquiry No. 15749/ 98, thereby declaring the petitioner to be an illegal migrant/foreigner of post 25.03.1971 stream.

4. After service on notice on the proceedings, the petitioner had entered appearance and she had submitted her written statement. In course of time, the petitioner had also tendered her evidence by examining herself as DW-1 and in support of her defence, the petitioner had also examined one Abdul Hai as DW-2. The petitioner had exhibited the following documents, viz., (i) Electoral Roll of 1966 (Ext.1); (ii) legacy data of NRC of 1966 (Ext.2); (iii) legacy data of NRC of 1971 (Ext.3); (iv) *Gaonburha* certificate issued by Gaonburha of Dalgaon Khuti

(Ext.4); (v) legacy data of NRC of 1951 (Ext.5); (vi) *Gaonburha* certificate issued by Gaonburha of No.5 Baruaajar G.P. (Ext.6); (vii) affidavit clarifying the petitioner's name and age (Ext.7).

5. The record received from the Tribunal discloses that the DW-1 was examined and cross-examined on 05.06.2018. The order dated 05.06.2018 does not disclose who had cross-examined the said DW-1. Moreover, the DW-2 was orally examined on 05.06.2018. However, it appears that he was not cross-examined. The presence of the A.G.P. is recorded only in the order 21.06.2018. From the nature of examination recorded in respect of DW-2, it appears to be in the nature of cross-examination rather than an examination-in-chief. Therefore, the Court is inclined to extract hereinbelow of the deposition of the DW-2 recorded on 05.06.2018.

I know the OP she is my neighbor. I know since her childhood. I do not know that who are of her parents. Her house was at Jhakua. But in my affidavit I have not stated this. She was 15 yrs at the time of her marriage. She has been casted her votes since 1971. I know the sons of OP. the 2 sons of the OP are declared as D-voters. The OP has not submitted the NRC of 1951. I have not submitted any false statement.

6. However, while discussing the evidence of DW-2, the learned Tribunal is found to have examined the records of two cases, being, (i) FT 5th, Case No. 825/2016, disposed of by opinion dated 11.05.2018; and (ii) FT 5th Case No. 837/2016, disposed of 28.05.2018, and by referring to the evidence of DW-2 as recorded on those cases and comparing his evidence tendered in the present case in hand, on finding discrepancies in the age of petitioner and her husband, disbelieved the evidence of Abdul Hai (DW-2).

7. In this regard, the Court is of the considered opinion that would be the

learned Tribunal had any doubt as regard the veracity of the evidence tendered by DW-2, the learned Tribunal could have produced the records of (i) FT 5th, Case no. 825/2016, and (ii) FT 5th, Case No. 837/2016, and would have asked questions to DW-2, which is permissible under Section 165 of the Evidence Act, 1872, which would have been a fair procedure of trial by asking questions in the presence of the petitioner , who is the proceedee before the learned Tribunal and/or in the presence of petitioner's learned counsel. Moreover, the learned Tribunal could have otherwise put to the petitioner to notice it would relying on the proceedings of other two cases where DW-2 had also appeared as a witness. Having not done so, the Court is unable to hold that the petitioner is given a fair trial because the learned Tribunal had discarded the evidence of DW-2 based on materials which do not form a part of record of the proceedings of Case No. F.T. (V) 1846/2016 and moreover, DW-2 was not put to notice to his previous statement purportedly made in (i) FT 5th, Case no. 825/2016, and (ii) FT 5th, Case No. 837/2016.

8. In view of above no other aspect of the impugned opinion has been examined.

9. Therefore, the impugned opinion being partly based on materials which do not form a part of record of Case No. F.T. (V) 1846/2016 and the evidence of DW-2 been discarded without bringing his earlier statements if any to his notice, is found to have vitiated the decision making process of the learned Tribunal, rendering the impugned opinion as perverse.

10. Accordingly, the opinion dated 29.06.2018, passed by the learned Member, Foreigners Tribunal (5th), Darrang, Mangaldai in Case No. F.T. (V) 1846/2016, arising out of S.P. Enquiry No. 15749/ 98, is hereby set aside.

11. The proceedings of Case No. F.T. (V) 1846/2016 is remanded back to the said learned Tribunal for a fresh decision in accordance with law. It is clarified that in the event the learned Tribunal is of the view that the evidence of DW-2 in the present case is contradictory to his previous statements made in (i) FT 5th, Case no. 825/2016, and (ii) FT 5th Case No. 837/2016, it would be open to the said learned Tribunal to recall DW-2 and to put such questions as may be permissible under Section 165 of the Evidence Act as now substituted by Section 168 of the Bharatiya Sakshya Adhinyam, 2023.

12. The petitioner is directed to appear before the learned Member, Foreigners Tribunal (5th), Darrang, Mangaldai on or before 13.06.2025 without requirement of any fresh notice to be served for petitioners appearance. The petitioner, by producing a certified copy of this order before the learned Tribunal shall await for further directions/order of the said learned Tribunal.

13. In the event the petitioner fails to appear before the said learned Tribunal within the time allowed it would be open to the said learned Tribunal to treat the petitioner as absent on call a pass appropriate order as deemed fit and proper.

14. The Registry shall send back the Tribunals records expeditiously.

15. The writ petition stands partly allowed to the extent as indicated above.

16. There shall be no order to cost.

JUDGE

JUDGE

Comparing Assistant