GAHC010117102020

2025:GAU-AS:7016

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

Case No. : WP(C)/3507/2020

JAHURA KHATUN @ JAHURA BEWA @ JAHURA BEGUM
D/O LT. JOWAHER ALI @ JAHER ALI @ JOHER ALI, W/O LT. KHALILUR RAHMAN, R/O VILL. JOYPUR, P.O. P.S. AND DIST. KOKRAJHAR, ASSAM, PIN-783370

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT. OF INDIA, DEPTT. OF HOME SHASTRI BHAWAN, NEW DELHI-110001

2:THE ELECTION COMMISSION OF INDIA
REP. B THE CHIEF ELECTION COMMISSIONER
INDIA
NEW DELHI
PIN-110001

3:THE STATE OF ASSAM
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF HOME. DISPUR
GUWAHATI-6

4:THE STATE CO-ORDINATOR
ASSAM
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-5
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND DIST. BARPETA

ASSAM
PIN-781301

6:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. K U AHMED, MR. W RAHMAN

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

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGMENT & ORDER (CAV)

Date : 30-05-2025
(M. Nandi, J)

Heard Mr. K.U. Ahmed, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned Standing Counsel, FT matters; Ms. S. Baruah, learned counsel for CGC; Mr. M. Islam appearing on behalf of Mr. A.I. Ali, learned Standing Counsel, ECI and Mr. H.K. Hazarika, learned Government Advocate.

2. The petitioner filed this writ petition under Article 226 of the Constitution of India, challenging the order/opinion of the Tribunal dated 25.02.2020, whereby the petitioner was declared as illegal migrant who entered into India from specified territory i.e. Bangladesh.

3. One FT case was initiated against the petitioner by the State and on receipt of the notice, the petitioner appeared before the Foreigners Tribunal, Barpeta and filed her written statement along with some documents in support of her claim of Indian citizenship. She also adduced 4 (four) nos. of witnesses

and exhibited some documents. After hearing the parties, the case was decided against the petitioner by impugned opinion dated 25.02.2020. Hence, this petition for setting aside the impugned opinion as above.

4. In her written statement, the petitioner stated that she was born on 09.06.1967 and brought up at village – Namberpara, Part II , P.S - North Salmara under the then Goalpara district. Her grandfather's name was Karim Miah and grandmother's name was Kulson Bibi, her father's name was Joher Ali @ Jowaher Ali and mother's name was Jinnatjan Nessa @ Jindi Nessa @ Jinda Nessa @ Jinnat Nessa, who were the Indian citizens.

5. It is also stated in the written statement that the petitioner has 3 (three) brothers and 5 (five) sisters including the petitioner namely Anowara Khatun, Atowar Rahman, Laily Khatun, Nazrul Islam, Jeleka Khatun, Jahura Khatun i.e. the present petitioner, Julhash Ali and Sahera Khatun. However, Anowara Khatun and Atowar Rahman had expired. At present, the petitioner's 1 (one) brother Nazrul Islam has been residing at village – Namberpara under Goalpara district and another brother namely Julhash Ali has been residing at Howly town, Barpeta.

6. It is further stated in the written statement that the name of the petitioner's parents and elder brothers appeared in the voter lists of 1966, 1970, 1985, 1989 from village - Namberpara under Goalpara district. However, due to some unavoidable circumstances, the petitioner shifted to Howly town, Barpeta wherein 1 (one) brother of the petitioner i.e. Julhash Ali has been presently residing.

7. From the written statement of the petitioner, it also discloses that on attaining the age of majority, the petitioner got married to one Khalilur Rahman

on 08.07.1992 by executing a *kabinnama*. However, the petitioner's husband had expired on 31.12.1999 and death certificate was issued by the office of Joint Director of Health Services, Kokrajhar.

8. According to the petitioner, her name has appeared in the voter lists of 1993 and 1997 along with her husband from village Joypur. And in the voter lists of 2005, 2013 and 2018, her name has also been appeared from the said village Joypur.

9. The petitioner also adduced her evidence-on-affidavit and has reiterated the same thing whatever stated in her written statement and exhibited the following documents -

i) ***Ext. A*** *– Voter list of 1966*

ii) ***Ext. B*** *– Voter list of 1970*

iii) ***Ext. C*** *– Voter list of 1985*

iv) ***Ext. D*** *– Voter list of 1989*

v) ***Ext. E*** *– Kabinnama*

vi) ***Ext. F*** *– Voter list of 1997*

vii) ***Ext. G*** *– Voter list of 1993*

viii) ***Ext. H*** *– Voter list of 1997*

ix) ***Ext. I*** *– Death certificate*

x) ***Ext. J*** *– Voter list of 2005*

xi) ***Ext. K*** *– Voter list of 2013*

xii) ***Ext. L*** *– Voter list of 2018*

xiii) ***Ext. M*** *– Electoral Photo ID Card*

xiv) ***Ext. N*** *– Pan Card*

xv) ***Ext. O*** *– Jamabandi*

xvi) ***Ext. P*** *– Ration Card*

xvii) ***Ext. Q*** *– Gaonburah certificate.*

xviii) ***Ext.R*** *– Chairpersons certificate of Howly Town Committee*

10. Learned counsel for the petitioner has submitted that in spite of exhibiting substantial number of documents before the Tribunal to prove her citizenship, however, the Tribunal did not accept the same without showing any reasonable grounds. The names of her parents and brothers have appeared consistently in the voter list of 1966 onwards which was ignored by the Tribunal.

11. Further submission of the learned counsel for the petitioner is that the petitioner has owned and possessed a landed property at village – Namberpara vide Patta No.15, Dag No.48.

12. According to learned counsel for the petitioner, the petitioner is an illiterate person. In the year 1997, the relatives of her husband inserted her name along with her husband without her knowledge under village -Mechpara under Barpeta district and since then her name has been marked as 'D' i.e. doubtful voter.

13. It is further contended that there are some minor discrepancies in the spelling of her name, her grandfather, her parents as well as their ages mentioned in various voter lists which are public documents prepared by the government officials and as such those discrepancies cannot curtail her citizenship right. Accordingly, the learned counsel for the petitioner prays for

setting aside the impugned order of the Tribunal dated 25.02.2020.

14. Per contra, Mr. Payeng, learned Standing Counsel for the FT matters has submitted that merely because a person's name is included in the jamabandi is not sufficient to prove that he is a citizen of a Country and the jamabandi record cannot be the basis of proving citizenship.

15. By referring the decision of this Court in ***Nur Begum Vs. Union of India and others [WP(C) 1900/2019]*** wherein it was observed that jamabandi document brought on record for the purpose of establishing linkage of the proceedee did not stand proved by means of any related sale deed. It was also observed that the Electoral Photo Identity Card also remains as a document inadmissible in evidence and such a document is not a proof of citizenship. Accordingly, Mr. Payeng submits that the jamabandi relied upon by the petitioner will not help the petitioner to establish that she is a citizen of India.

16. It is further submitted that merely because the evidence adduced has not been rebutted will not give any sanctity to an inadmissible evidence relied upon by the petitioner. It has also been submitted that apart from the discrepancy in the name, there is discrepancy in the age of the petitioner and her parents in the voter lists which would make the claim of the petitioner doubtful as also observed by the Tribunal in its opinion.

17. Accordingly, learned counsel for the respondent/State prays for dismissal of the writ petition.

18. Having heard the learned counsel for the parties and on perusal of the record of the Tribunal including the relevant documents exhibited by the petitioner, now the question comes whether this Court by exercising the extraordinary jurisdiction under Article 226 of the Constitution of India more

particularly when it comes to issue of writ of certiorari, has such power to interfere with the facts on the relevant issue founded by the Tribunal.

19. Before we further proceed with the case, it is apt to consider the relevant observation made by the Hon'ble Supreme Court on the issue in question in the case of ***Central Council for Research in Ayurvedic Sciences and another Vs. Bikartan Das and others reported in (2023) SCC Online SC 996*** which is reproduced as follows –

> "*51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.*
>
> *52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the*

parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not….."

20. On the background of the aforesaid judgment, we may now consider the documents relied on by the petitioner and the evidence adduced by the petitioner and her witnesses.

21. Regarding documents vide ***Ext.A and Ext.B*** - voter list of 1966 and 1970 which show the names of one Jowaher Ali, S/o Karim Miah, Jindi Nessa, W/o Jowaher Ali and Atowar Rahman, S/o Jowaher Ali from village – Namberpara, Part II, district- Goalpara, P.S Abhayapuri. ***Ext.C -*** 1985 voter list has been produced by the petitioner i.e. after a gap of 15 years which shows the names of Joher Ali, S/o Korim, Jinnat Nessa, W/o Joher and Nazrul Islam, S/o Joher from village – Purbapara, Part III, district- Goalpara, P.S Abhayapuri. There is no clarification on that aspect why the petitioner has failed to produce the voter lists prior to 1985.

22. From ***Ext.D*** **-** 1989 voter list, it discloses the names of Joher Ali, S/o A. Korim, Jinnat Nessa, W/o Joher Ali and Nazrul Islam, S/o Joher Ali from village – Namberpara, Part II. In ***Ext.F*** **-** 1997 voter list, it appears the names of Joher Ali, S/o A. Korim, Jinnatjan Nessa, W/o Joher, Julhash Ali, S/o Joher, Nazrul Islam, S/o Joher and Jaleka Khatun, D/o Joher.

23. The subsequent voter lists are of the petitioner vide ***Ext.G*** - voter list of 1993 which shows the name of one Khalilur Rahman, S/o Hatem, aged about 50 years. But it is interesting to note that Jahura Begum i.e. the present petitioner, W/o Khalilur, aged about 60 years. From ***Ext.H*** **-** 1997 voter list, the name of the petitioner i.e. Jahura Begum appears as wife of Khalilur, aged about 32 years and her name appears from village- Joypur. From ***Ext.J, Ext.K and Ext.L*** **–** voter lists of 2005, 2013 and 2018 respectively show the name of one Jahura Bewa, W/o Khalilur from Joypur village under Kokrajhar district. But the petitioner nowhere stated that after her marriage with Khalilur Rahman, she used to reside at Joypur.

24. According to the petitioner, her husband expired on 13.12.1999 due to illness at Cooch Bihar. However, death certificate was issued vide ***Ext.I*** by the Directorate of Health Services, Kokrajhar. The aforesaid information would indicate that the death of the petitioner's husband was not at all registered in the Hospital at Cooch Bihar. The petitioner is totally silent in which Hospital her husband was treated at Cooch Bihar. The petitioner also did not submit any medical document of her husband that her husband was suffering from any kind of illness and treated in a Hospital at Cooch Bihar. There is no reflection in ***Ext.I*** that before issuing the death certificate, the Jurisdictional Authority conducted any enquiry and based on the enquiry, issued death certificate to the petitioner. Under such backdrop, ***Ext.I*** has no such value in the eye of law.

25. Coming to the evidence of the witnesses adduced in the case. According to the petitioner as DW-1, she was born on 09.06.1967 at village– Namberpara, Part II , P.S - North Salmara under Goalpara district but in her cross-examination, DW-1 replied that her date of birth was 09.06.1972. She came to know about her age from voter list. DW-1 further stated that she has 3 (three) brothers and 5 (five) sisters including herself and out of 8 (eight) brothers and sisters, 2 (two) expired i.e. Anowara Khatun and Atowar Rahman. But in her cross-examination, DW-1 contradicted herself by stating that at present she has only 2 (two) brothers and 1(one) has expired. But she is totally silent about her 5 (five) sisters.

26. DW-2 and DW-3 i.e. projected brothers of the petitioner, averred as per statement of their sister vide DW-1. According to DW-2, he has 3 (three) brothers and 5 (five) sisters including himself and his 1(one) brother namely Atowar Rahman and 1(one) sister namely Anowara Khatun have expired. But during his cross-examination, DW-2 replied that he could not say after 1970, why the name of his elder brother Atowar Rahman has not been included in the voter list.

27. Though DW-3 in his evidence deposed that his sister i.e. the petitioner was marked as 'D' (doubtful) voter of village-Mechpara under Barpeta district in the year 1997, however, during his cross-examination, DW-3 stated that since 1997, she was declared 'D' (doubtful) voter of village – Gandharipara. But so far his knowledge goes, his sister since 1993 casted vote from Joypur village under Kokrajhar district.

28. DW-4 is lat mandal of Srijangram Revenue Circle, Abhayapuri. From his deposition, it discloses that as per ***Ext.O***, the name of the petitioner was mutated in place of his father by inheritance along with his brothers and sisters.

In his cross-examination, DW-4 replied that the mutation was done on 11.09.2017. For mutation of the land, one brother or sister of the petitioner filed a petition along with legal heir certificate. But he could not recollect who issued the legal heir certificate. He could not say whether the date of death of the father of the petitioner was reflected in the said petition.

29. Having seen ***Ext.O***, it reveals that the mutation was done on 11.09.2017 as per order of the Circle Officer i.e. after 25.03.1971. The land bearing Dag No.48 vide mutation case no.BON/SRI/2017-18/876/FMUT was mutated in the name of Atowar Rahman, S/o Joher Ali, Nazrul Islam, S/o Joher Ali, Julhas Ali, S/o Joher Ali, Anowara Khatun, D/o Joher Ali, Laily Khatun, D/o Joher Ali, Jaleka Khatun, D/o Joher Ali, Jahura Khatun, D/o Joher Ali and Sahera Khatun, D/o Joher Ali by inheritance. But the petitioner failed to produce any sale deed or any up-to-date land revenue receipts of the said land.

30. In the case of ***Guru Amarjit Singh Vs. Rattan Chand and Ors.,*** reported in ***AIR 94 SC 227***, Hon'ble Supreme Court has held that entries in the jamabandi is not a proof of title. It is recorded for mere fiscal properties and as such the petitioner cannot derive any benefit out of the entry of name mentioned in the jamabandi. In the said case, it was also held that the party has to prove his title over the land not through the jamabandi.

31. It is a proposition of law that merely because the evidence adduced has not been rebutted will not give any sanctity to an inadmissible evidence relied upon by the petitioner. In this regard, we may refer the case of ***State of Assam and Anr. Vs. Ohab Ali [WPC No.2641/2017***] which is reproduced as follows -

> "*16. On the other hand, from the impugned order, we find that after narrating the case as projected by the respondent,*

Tribunal observed that State did not examine any witness and failed to adduce any rebuttable evidence. Therefore, Tribunal answered the reference against the State. We are afraid the approach taken by the Tribunal is contrary to the law laid down by the Full Bench of this Court in State of Assam Vs. Moslem Mondal, reported in 2013 (1) GLT,809.

Under Section 9 of the Foreigners' Act, 1946, burden is on the proceedee to prove that she is not a foreigner, but a citizen of India and this burden never shifts. This burden has to be discharged by the proceedee by adducing evidence which are admissible; which must be proved; and which must have relevance to the facts in issue. By mere filing of documents without examining its admissibility and without the documents being proved or without examining its relevance, it cannot be said that the proceedee had discharged his burden. Question of rebuttal evidence by the State will arise only if the proceedee adduces evidence which are admissible, proved and which have relevance."

32. In the case of ***Sarbananda Sonowal Vs. Union of India and Anr.,*** reported in ***(2005) 5 SCC 665*** which reads as follows –

"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 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."

33. In the case of ***Rukia Begum Vs. Union of India and Others, [WP(C) No.6344/2016]*** which reads as follows –

"Having said that, we may advert to the case in hand. In view of what we have discussed above, we are of the firm view that since petitioner had placed reliance on Ext.1 certificate, burden was on the petitioner to prove the said certificate as well as the contents thereof irrespective of whether objection was raised by the State or not."

34. Regarding discrepancy of name and age, we may rely on the decision of this Court in ***Abdul Kuddus Vs. Union of India and others vide WPC No.1073/2016*** which is as follows –

"20. A contention was raised during the hearing that discrepancies in the name and age in the voters list should not be given undue weightage as because the entries were made by the electoral authorities and not by the proceedee. However, this aspect of the matter was gone into by this Court in the case of ***Basiron Bibi -vs- Union of India, 2018 (1) GLT 372*** *wherein it was held as under:*

> *"Reliance placed in the case of Abdul Matali @ Mataleb (Md.) (supra), can be of no assistance to the petitioner inasmuch, as it has already been clarified by this Court in previous decisions that the said decision did not lay down any law and was a decision confined to the facts and circumstances of that case. Regarding discrepancies in the voters' lists which the petitioner contended were not her creation being entered into by officials of Election Commission and therefore should not be used adversely against the petitioner, such contention is without any substance. The voters' lists were adduced as evidence by the petitioner herself to prove her case that she was not a foreigner but a citizen of India. Petitioner cannot insist that only that portions of the voters' lists which are in her favour should be accepted and those portions going against her should be over-looked. This is not how a document put forward as a piece of evidence should be examined. The document has to be appreciated as a whole."*

35. In the case of ***Romila Khatun Vs. Union of India and Ors. , [WP(C) No.3807/2016, disposed of on 08.06.2018]*** which reads as follows –

> *"It is trite that documentary evidence would have to be proved on the basis of the record and the contemporaneous record must substantiate and prove the contents of the document. Proof of document is one thing and proof of contents is another. Not only the document would have to be proved but its contents would also have to be proved. That apart, the truthfulness of the contents of the document would also have to be established from the record. A document or the contents of the document cannot be proved on the basis of personal knowledge. In so far Ext-F document vis-a-vis the petitioner is concerned, Nimai Miah was a resident of Kukarpar village. Petitioner after her marriage with Saijuddin had left the said village and started residing at village Hirajani under Hajo Police Station. When the petitioner got married and since when she had been residing at village - Hirajani has not come on evidence. When the petitioner was not a resident of village - Kukarpar on the date when the Gaonburah had issued the certificate, Gaonburah could have issued the certificate only on the basis of the record maintained in his office. We also do not know what happened to Nimai Miah after his name appeared in one of the documents i.e., voters list of 1965 (Ext C). Nimai Miah was 30 years of age in 1965 and in the ordinary course, he would have been around much beyond 25.03.1971. From the voters*

list of 1997 (Ext-A), we find that Ramila Bibi was 20 years of age. This is the first time the age of the petitioner has come on record. If Ramila Bibi was 20 years of age in 1997, she would have born in the year 1977, which means that her father ought to have been alive at least till 1976. Therefore, on the basis of the testimony of Md. Ramesh Ali, as discussed above, it cannot be said that Ext-F was proved. Besides, there is unauthorized use of the State Emblem of India by the Gaonburah which has rendered Ext-F inadmissible in evidence. Under the State Emblem of India (Regulation of Use) Rules, 2007, Gaonburah is not authorized to use the State Emblem of India in any manner. If Ext-F is excluded from consideration, there is nothing on record to establish that Ramila Bibi or Ramila Khatun was the daughter of Nimai Miah of Ext-C (1965)."

36. In the instant case, the learned Tribunal appreciating the evidence on record has held that the petitioner to be a foreign national who illegally entered Assam after the cutoff date i.e. 25.03.1971. Such findings of fact cannot be likely interfered with by exercising writ jurisdiction unless it is shown to be a perverse finding or the finding being not based on the evidence on record. The writ court exercising extraordinary jurisdiction under Article 226 of the Constitution of India cannot sit on appeal over the findings of fact recorded by the Tribunal. Needless to say that this Court exercising its jurisdiction Article 226 of the Constitution of India cannot re-appreciate the evidence produced before the Tribunal and on the basis of such re-appreciation of evidence arrived at a finding different from that recorded by such Tribunal. The settled position of law

is that a question of fact once decided by the Tribunal on the basis of evidence on record, it is not appropriate for the High Court under Article 226 of the Constitution of India to re-appreciate the evidence and come to a different finding.

37. On perusal of the impugned order in reference to the evidence on record, it cannot be said to be a case of any wrong appreciation of evidence or record of perverse finding opposed to the evidence on record. Above being the position, this Court exercising writ jurisdiction cannot interfere with the same.

38. In view of the above discussion, we do not find any merit in the writ petition and accordingly it is dismissed. There shall be no order as to costs.

39. The writ petition is disposed of accordingly.

40. Transmit the records to the Tribunal.

JUDGE **JUDGE**

Comparing Assistant