

GAHC010025082017



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

Case No. : WP(C)/3291/2017

ZELEKHA KHATUN @ JULEKHA KHATUN
W/O- MD. MANNAF ALI, D/O- MALE UDDIN @ MALEK UDDIN, VILL-
SAKTOLA, P.S- LAKHIPUR, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECY. TO THE GOVT OF INDIA, MIN OF HOME AFFAIRS, NEW
DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
GOALPARA
DIST- GOALPARA
ASSAM

4:THE SUPERINTENDENT OF POLICE
GOALPARA
DIST- GOLAPARA
ASSAM

5:THE OFFICER-IN-CHARGE
LAKHIPUR POLICE STATION
DIST- GOLAPARA
ASSA

Advocate for the Petitioner : MS.C R RABHA

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

:::BEFORE:::

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 31.08.2023

Date of judgment & order : 21.09.2023

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Ms. L. Devi, learned Central Government Counsel, appearing on behalf of respondent No. 1; Mr. G. Sarma, learned Standing Counsel, Foreigners' Tribunal, appears for respondent Nos. 2, 4 & 5 as well as Mr. P. Sarma, learned Government Advocate appearing on behalf of respondent No. 3.

2. This is an application under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus and/or certiorari and/or any other appropriate order or orders in the like nature.

3. The brief facts of this case is that the Superintendent of Police (Border), Goalpara, made a reference to the Foreigners' Tribunal, Goalpara, to know as to whether the petitioner is a foreigner or not and accordingly, a reference case,

being F.T. Case No. 4386/G/2011, has been registered, before the Foreigners' Tribunal No. 1, Goalpara, Assam. It is stated that the actual name of the petitioner is Julekha Khatun, w/o Mannaf Ali, but in the notice dated 29.12.2016, her name has been written as Jelekha Khatun, w/o Md. Mannaf Ali, and accordingly, she refused to receive the notice as her name is written wrongly in the notice. However, the process server served the notice on the petitioner saying that she is the same person and she accordingly received the notice. After receiving the notice, she appeared before the Tribunal and contested the case by filing her Written Statement. The petitioner also adduced 3 (three) witnesses in support of her case. But she could not obtain the certified copy of the evidence of the witnesses as the Tribunal refused to supply the certified copies to the petitioner.

4. After hearing the arguments put forwarded by both the parties, the learned Member, Foreigners' Tribunal No. 1, Goalpara, vide impugned judgment and order dated 17.04.2017, in F. T. Case No. 4386/G/2011, has declared the petitioner as a foreigner.

5. In her written statement, she categorically stated that her actual name is Julekha Khatun and not Jelekha Khatun and further she stated in her written statement that the name of her projected father is Malekuddin, but he is also known as Maleuddin. And Malekuddin and Maleuddin is one and the same person. But the learned Member, Foreigners' Tribunal No. 1, Goalpara, came to a wrong conclusion and presumption that in the Voters List of 1966 (Ext.-A), her father's name has been written as Maleuddin and in Ext.-C, her father's name is reflected as Malekuddin and considering such contradiction in the name of her

father, the evidence and exhibits were discarded, and it is held that the petitioner could not establish her relationship with her projected father and accordingly, learned Member, Foreigners' Tribunal No. 1, Goalpara, declared the petitioner/proceedee as a foreigner vide judgment and order dated 17.04.2017, which is bad in law and liable to be set aside and quashed.

6. The petitioner has established her case beyond all reasonable doubt and produced all the documents to prove herself to be the Indian Citizen and the evidences of D.Ws. were also not been challenged by the prosecution and thus, the burden of proof has already been shifted to the State. But the State has not produced any evidence except the enquiry report and hence, the judgment passed by the learned Member, Foreigners' Tribunal is bad in law, perverse and liable to be set aside and quashed. It is further pleaded that the name of her projected father- Malekuddin and mother- Showagi Nessa appeared in the Voters List of 1966 from village Aolatoli, P.S. Lakhipur under LA- 44 Goalpara West, LAC, and the name of her parents are also appeared in the Voters List of 1970 from the same village. Further, the name of the petitioner appeared in the Voters List of 1997 from Village Saktola, P.S. Lakhipur, along with her husband, namely, Mannaf Ali. In the subsequent Voters List of 2008 also, the name of the petitioner appeared from the same village along with her husband. That apart, her name also regularly appeared in the Voters List of 2011 & 2017. Thus, the petitioner has been able to discharge the burden under Section 9 of the Foreigners Act to prove herself to be Indian Citizen by producing the relevant documents and the 3 (three) witnesses in support of her case. But, without considering the oral as well as documentary evidence, the learned Member, Foreigners' Tribunal No. 1, Goalpara, passed the impugned judgment and order

illegally declaring the present petitioner/proceedee to a foreigner of post 1971 stream.

7. The petitioner relied on and exhibited the following documents before the learned Member, Foreigners' Tribunal No. 1, Goalpara:-

- (i) Exhibit-A, certified copy of Voters List of 1966 of Village Aolatoli;
- (ii) Exhibit-B, certified copy of Voters List of 1970 of Village Aolatoli, wherein the name of the projected father and mother of the petitioner appeared;
- (iii) Exhibit-C, certificate issued by the Gaon Bura; and
- (iv) Exhibit-D, Identity Card issued by Deputy Commissioner, Goalpara.

8. Apart from that, the petitioner/proceedee also produced the Voters List of 1989, 1997, 2008, 2011 & 2017. It is stated that the name of the proceedee was enrolled in the Voters List of 1997 of Village Saktola, wherein her name along with her husband- Mannaf Ali appeared till the Voters List of the year 2017. In the Voters List of 1966, the name of her projected father is mentioned as Maleuddin, son of Lt. Bhajon Sheikh, and the name of her mother- Showagi Nessa also appeared in the Voters List of 1966. But the name of her projected father appeared in the Voters List is Maleuddin and not Malekuddin, though Maleuddin and Malekuddin are one and the same person. It is further claimed that the learned Member, Foreigners' Tribunal No. 1, Goalpara, did not consider

the fact that the name of her parents appeared in the Voters List of 1966 & 1970 and her name is also appeared along with her husband in the Voters List of 1997 onwards. But the learned Member, Foreigners' Tribunal No. 1, Goalpara, rejected the claim of the petitioner only on the ground that there is a controversy in the name of Maleuddin and Malekuddin, though it is specifically pleaded by her that Maleuddin and Malekuddin are one and the same person. That apart, she also adduced the evidence of D.Ws. 2 & 3 in support of her case. D.W.-2 is her own uncle and D.W.-3 is the Gaon Bura, who issued the certificate stating that she is the daughter of Malekuddin of Village Aolatoli. But in spite of producing the relevant documents, the learned Member, Foreigners' Tribunal No. 1, Goalpara, declared the petitioner/proceedee as a foreigner of post 1971 stream.

9. Challenging the aforesaid order of the learned Member, Foreigners' Tribunal No. 1, Goalpara, the petitioner/proceedee filed the present writ petition.

10. The learned counsel for the petitioner has submitted that the actual name of the petitioner is Julekha Khatun, however she received the notice wherein the name of the petitioner/proceedee is written as Jelekha Khatun and the Julekha Khatun and Jelekha Khatun is one and the same person. Further it is submitted that in her written statement, the petitioner clearly mentioned that her father's name is Malekuddin and he is also known as Maleuddin and also made a statement that Malekuddin and Maleuddin are one and the same person. But the learned Member, Foreigners' Tribunal No. 1, Goalpara, did not consider this fact of the case and illegally arrived at a decision that the petitioner/proceedee is a foreigner of post 1971 stream. The learned counsel for the petitioner further

submitted that the minor discrepancy can be ignored and in this case also, the only discrepancy in the name of Maleuddin and Malekuddin can be ignored by the Court. In this context, he relied on a decision of Hon'ble Division Bench of this Court reported in **(2020) 1 GLT 330 (Motior Rahman Vs. Union of India & Ors.)**, and further stressed on paragraph 11 of the said judgment, which reads as under:

“11. We also find from the record that the learned Tribunal has declared the petitioner as a foreigner based on some minor discrepancies in recording of age and also for non-mentioning of the date of second marriage of the father of the petitioner. However, such discrepancies, in our opinion, are minor in nature and hence, even if found correct, would not have any material bearing in the outcome of this writ petition. Moreover, in the decision of the Hon'ble Supreme Court rendered in the case of Sirajul Hoque Vs. the State of Assam and others in connection with Criminal Appeal No. 267/2019 arising out of SLP (Crl) No. 4500/2018 it has been held that minor discrepancies in recording of names, age and address of the family members of the proceedee cannot be ground to doubt his case.”

11. In this context, Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal, has submitted that the petitioner/proceedee could not furnish the document in support of her case and she produced only the Gaon Burha's Certificate as a link document to establish herself to be the daughter of one Malekuddin and the same is not at all sufficient to prove herself to be daughter of Malekuddin @ Maleuddin, whose name is seems to be appeared in the Voters List of 1966 & 1970. Thus, the learned Member, Foreigners' Tribunal No. 1, Goalpara, arrived at a just decision declaring the petitioner/proceedee as a foreigner of post 1971 stream. In support of his submission, the learned Standing Counsel, Foreigners Tribunal, also relied on the decision of this Court passed in **WP(C)/1073/2016 (Abdul Kuddus Vs. Union of India)**, wherein it has been held that the documents should be appreciated as a whole.

12. After hearing the submissions made by the learned counsels for both sides, we have perused the case record as well as the opinion rendered by the learned Member, Foreigners' Tribunal No. 1, Goalpara, in F.T. Case No. 4386/G/2011, which was passed on the reference made under Reference No. GLP(B)/42/2000/1430.

13. On perusal of the record as well as the opinion, it is seen that the petitioner/proceedee basically relied on Voters List of 1966 & 1970 claiming that the persons named Maleuddin and Showagi Nessa are her father and mother, respectively, and their names are continuously appeared in the Voters List of 1960 as well as in the Voters List of 1970. However, she could not produce any Voters List showing her name along with her father. But it is submitted by the learned counsel for the petitioner that the petitioner got married to one Mannaf Ali and after her marriage only, her name appeared in the Voters List of 1997 onwards along with her husband- Mannaf Ali. But it is seen that in both the Voters List, i.e. Exts.- A & B, the name of the person appearing is Maleuddin, son of Lt. Bhajon Sheikh, and not as Malekuddin, son of Lt. Bhajon Sheikh, though the petitioner claimed that Maleuddin and Malekuddin are one and the same person. From the only link document, i.e. the Gaon Bura Certificate, produced by the petitioner/proceedee, it is also seen that the name of the projected father of the petitioner is stated to be Malekuddin and not as Maleuddin and there is no other document which could support that the person Malekuddin and Maleuddin are one and the same person. No other link document could be produced by the petitioner/proceedee except the certificate issued by the Gaon Bura, who has also adduced his evidence as D.W.-3.

14. From the evidence of said D.W.-3, it is seen that he issued the Certificate to the petitioner stating that she is the daughter of Malekuddin. But, in his cross-evidence, he admitted that he issued the certificate without verifying the Voters List of 1966 and thus, it is seen that he has no personal knowledge in regards to the enrolment of the name of the father of the petitioner and thus, it can be presumed that he issued the certificate only on the information received by the petitioner and without having any personal knowledge.

15. Coming to the evidence of D.W.-2, it is seen that he claimed himself to be the uncle of petitioner, but it is seen that he could not produce any such document where his name is appeared along with her parents or the father of the proceedee. From his cross-evidence, it is seen that he is the maternal uncle of the petitioner, but in support of that also, he could not produce any Voters List or any documents to even prove himself to be the maternal uncle of the petitioner. Thus, it is seen that neither the petitioner could produce any document in support of her case that the person Maleuddin and Malekuddin are one and the same person nor she could produce any documents to prove herself to be daughter of Malekuddin @ Maleuddin. Though she produced the only link document, i.e. Gaon Bura Certificate, which is exhibited as Ext.-C. It is a fact that her name appeared in the Voters List of 1997 along with her husband and thereafter also, in subsequent Voters List, her name appeared along with her husband, but she could not establish herself to be the daughter of said Maleuddin, though she claim that the said Maleuddin @ Malekuddin is her father. The D.W.-2 and D.W.-3 also could not substantiate the plea of the petitioner that the Maleuddin of the Voters List of 1966 & 1970 is her father nor

she could file any other link document to establish herself to be daughter of said Maleuddin, i.e. the person who casted vote in the year 1966 & 1970. Thus, the petitioner failed to discharge her burden under Section 9 of the Foreigners Act to prove herself to be the Indian citizen.

16. In view of above, we find no good reason to interfere with the impugned order passed by the learned Member, Foreigners' Tribunal No. 1, Goalpara. Consequently, the writ petition stands dismissed. Interim order passed earlier, if any, stands vacated.

17. Registry to send down the LCR forthwith and inform the concerned Foreigners' Tribunal, Deputy Commissioner and the Superintendent of Police (Border) for doing the needful.

18. A copy of this order may be furnished to the learned Standing Counsel, Election Commission of India and State Coordinator, NRC.

JUDGE

JUDGE

Comparing Assistant