

GAHC010088802021



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

Case No. : WP(C)/6170/2021

KHUDEJA KHATUN
W/O ABDUR RAHMAN, R/O VILL. PUB DATIALBARI, P.O. DATIALBARI, P.S.
LAHARIGHAT, DIST. MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI.

2:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
HOME DEPTT.
DISPUR
GUWAHATI 781006

3:THE DEPUTY COMMISSIONER

MORIGAON DIST.
MORIGAON
ASSAM.

4:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST. MORIGAON
ASSAM.

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI 110001

6:THE STATE CO ORDINATOR

NATIONAL REGISTRATION OF CITIZENS (NRC) BHANGAGARH
GUWAHATI 781032

7:THE MEMBER

FOREIGNERS TRIBUNAL NO. 5
MORIGAON
DIST. MORIGAON

Advocate for the Petitioner : MR J K MISHRA

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

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 22.09.2023

(L.S.Jamir, J)

Heard Mr. A.M.S.Mazumdar, learned counsel for the petitioner. Also heard Ms. L.Devi, learned CGC for the respondent Nos. 1 and 6; Mr. G.Sharma, learned standing counsel, FT for the respondent Nos. 2 and 4; Mr. P.Sharma, learned Addl. Senior Govt. Advocate for the respondent No.3 and Mr. T.Pegu, learned standing counsel, ECI for the respondent No.5.

2. The petitioner is aggrieved with the order dated 21.09.2020, passed by Member, Foreigners Tribunal 5th Morigaon, Assam in Case No. FT(D) 1341/2017 by which she has been declared to be a foreigner who entered into India(Assam) after 25.03.1971.

3. The petitioner in order to prove that she is a citizen of India and not a foreigner, exhibited the Voter List of 1966 of Village Udkati, wherein, her father, namely, Jahur Uddin appears at Sl. No.52 and her mother Sahar Banu appears at Sl. No. 53 as Exhibit-1. The petitioner also exhibited the Voter List of 1970 of Village Udkati, wherein, her father Jahur Uddin appears at Sl. No. 47 and her mother Sahar Banu appears at Sl. No. 48 as Exhibit-2. It is the claim of the petitioner that she married one A. Rahman and thereafter, after attaining the age of majority, her name Khadeja Khatun appeared in the Voter List of 1985 for the Village Datialbori at Sl. No. 339 and the name of her husband A.Rehman appeared at Sl. No. 338.

4. To prove her linkage with her father, namely, Jahur Uddin, the petitioner exhibited a certificate dated 14.06.2015, issued by the Secretary of Kacharibori Gaon Panchayat, wherein, it is certified that her father's name is Jahur Uddin and her mother's name is Sahar Banu as Exhibit 5. Further, the School Transfer Certificate issued by the Head Master of Bata bori L.P. School was exhibited as Exhibit 6, wherein, the petitioner is shown as the daughter of Jahur Uddin/Sahar Banu and her date of birth is indicated as 11.01.1967. Another certificate issued by the Gaon Panchayat of Udkati Gaon dated 13.11.2019 was also exhibited as Exhibit 8, wherein, it is certified that the petitioner is the daughter of Late Jahur Uddin of Village Udkati.

5. The Tribunal considered Exhibits 5, 6 and 8 and came to the conclusion that as the said Certificate were not proved by the issuing authority, the same does not help the petitioner to prove her linkage with her father Jahur Uddin. With regard to the Exhibits 1 and 2, i.e., Voter List of 1966 and 1970, the

Tribunal came to the conclusion that the petitioner's name is not enlisted in the said two Voter Lists together with her parents, step mother and brother as such, the two Voter Lists (Exhibit 1 and 2) does not help the petitioner in establishing her linkage with her parents. Thereafter, the Tribunal came to the conclusion that the petitioner is a foreigner who entered into India(Assam) after 25.03.1971.

6. The learned counsel for the petitioner submits that the petitioner could not prove Exhibits 5, 6 and 8 before the Tribunal, inasmuch as the issuing authority was not examined to prove the same. He submits that the failure to prove the Exhibits was due to miscommunication between the petitioner and her counsel as well as due to no proper guidance with regard to the same. Accordingly, it is submitted that an opportunity be granted to the petitioner to prove the Exhibits 5, 6 and 8 in order to prove her linkage with her father namely, Jahur Uddin after examining the issuing authority.

7. We have considered the submissions forwarded by the learned counsel for the parties and on perusal of the material available on record, we find that Exhibits 5, 6 and 8 could not be proved as the issuing authority was not examined. In that view of the matter, we are of the considered opinion that an opportunity should be given to the petitioner to prove the Exhibits 5, 6 and 8 before the Tribunal again.

8. Accordingly, the matter is remanded to the Foreigners' Tribunal 5th Morigaon to have a reconsideration of the Case No. FT(D) 1341/2017 by permitting the petitioner to prove her Exhibits 5, 6 and 8 and thereafter,

proceed in accordance with law.

Accordingly, the order dated 21.09.2020, passed by the Foreigners Tribunal 5th Morigaon in Case No. FT(D) 1341/2017 is set aside and quashed.

9. The petitioner is directed to appear before the Foreigners Tribunal 5th Morigaon on 13th of October, 2023.

With the aforesaid observations and directions, the writ petition is disposed of.

JUDGE

JUDGE

Comparing Assistant