

GAHC010195322020



AS:10133-DB

2024:GAU-

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

Case No. : WP(C)/364/2021

JAHURA KHATUN
D/O LATE ALAUDDIN SHEIKH @ ALA UDDIN @ MD. ALAUDDIN SIKDER
AND WIFE OF NURUL ISLAM, R/O VILL. RAMPUR, P.S. KALGACHIA, DIST.
BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF
HOME DEPTT., NEW DELHI-1

2:THE STATE OF ASSAM

REPRESENTED BY SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI 6

3:SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND P.S. BARPETA
DIST. BARPETA
ASSAM
PIN 781315

4:THE DEPUTY COMMISSIONER

BARPETA
DIST. BARPETA
ASSAM
PIN 781315

5:ELECTION COMMISSION OF INDIA

REPRESENTED BY CHIEF ELECTION COMMISSIONER NEW DELHI-1

6:STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM ACHYUT PLAZA
BHARALUPAR
BHANGAGARH
GUWAHATI 78100

Advocate for the Petitioner : MR. S ALIM, MR. A T SIKDER

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

:: PRESENT ::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. S. Alim, Advocate.
For the Respondents	:	Mr. P. Sarma, Government Advocate, Assam. Mr. A.I. Ali, Standing Counsel, Election Commission of India. Mr. G. Sarma, Standing Counsel, Foreigners' Tribunal, Assam.

Date of Hearing	:	24.01.2024.
Date of Judgment	:	04.10.2024.

JUDGMENT AND ORDER (CAV)

(Parthivjyoti Saikia, J)

Heard Mr. S. Alim, learned counsel appearing for the petitioner. Also heard Mr. P. Sarma, learned Government Advocate; Mr. A.I. Ali, learned Standing Counsel, Election Commission of India and Mr. G. Sarma, learned Standing Counsel, Foreigners' Tribunal, Assam.

2. This is an application under Article 226 of the Constitution of India whereby the opinion dated 26.10.2018 passed by the learned Member, Foreigners' Tribunal-5th, Barpeta in F.T. (5th) 278/2016 (Old Case No.IMDT Case No.1770 of 1997) is under challenge.

3. The Superintendent of Police, Barpeta forwarded a reference under the Illegal Migrants (Determination by Tribunals) Act, 1983 suspecting that the petitioner Jahura Khatun, wife of Nurul is an illegal migrant. When the Illegal Migrants (Determination by Tribunals) Act, 1983 was declared unconstitutional by the Supreme Court of India and as per the direction of said Hon'ble Court, the said case was transferred to the Tribunal constituted under the Foreigners' Act, 1946 read with Foreigners' (Tribunals) Order, 1964.

4. After receipt of notice, the petitioner Jahura Khatun appeared before the Tribunal and filed her written statement claiming to be a genuine Indian citizen. She stated that she is the daughter of Ala Uddin Sheikh @ Alal Uddin, whose name appeared in the NRC details relating to the village Balatari under the District of Dhubri. According to the petitioner, her father's name appeared in the voter lists of 1966 and 1970.

5. The petitioner claimed that when she reached the age of majority, she was given in marriage to Nurul Islam of village Rampur under Kalgachia Police Station in the District of Barpeta.

6. The petitioner examined herself along with Md. Ali Choudhury (DW-2), Abdur Rejjak (DW-3) and her husband Nurul Islam (DW-4).

7. In her evidence, Jahura Khatun did not prove any documents in support of her case.

8. Only the DW-3 Abdur Rejjak, who claimed to be the elder brother of Jahura Khatun had proved the documentary evidence. The documents produced by his witness are as follows:-

1. Exhibit-A - NRC details of Alal Uddin.
2. Exhibit-B -Voter list of 1966 showing the name of Ala Uddin Sheikh of 144 Balatari, District- Dhubri.
3. Exhibit-C -Voter list of 1970 showing the name of Ala Uddin Sheikh of 144 Balatari, District- Dhubri.
4. Exhibit-D - A sale deed of 1968 containing the name of Ala Uddin Sikdar.
5. Exhibit-E - A certificate of Gaonburah of village Rampur certifying that the petitioner is a resident of village Rampur.
6. Exhibit-F - Is the certificate issued by the Secretary of Tarangajhar Gaon Panchayat of Dhubri district showing that the petitioner is the daughter of Ala Uddin Sheikh.
7. Exhibit-G -1985 Voter list containing the name of Abdul Rejjak.
8. Exhibit-H - 1989 voter list containing the name of Abdul Rejjak.
9. Exhibit-I - 1997 voter list of village Rampur containing the name of the present petitioner Jahura Khatun.
10. Exhibit-J - 2010 voter list.
11. Exhibit-K - 2017 voter list.
12. Exhibit-L - Land patta copy.
13. Exhibit-M - Is the voter ID card.

9. DW-2 Md. Ali Choudhury, the Secretary of Tarangajhar Gaon Panchayat was examined to prove the Exhibit-F. He has stated in his evidence that Jahura Khatun filed an application before him to issue a certificate linking her name with her projected father Ala Uddin Sheikh. According to this witness, on the basis of a voter list of 1966 and on the basis of a KP Patta No.158, he issued the said document i.e. Exhibit-F.

10. The third witnesses examined by the petitioner is her husband Nurul Islam. He did not prove any documents.

11. The learned Tribunal held that the petitioner Jahura Khatun failed to prove that she is an Indian citizen and came to India after 25.03.1971.

12. We have carefully gone through the opinion given by the Tribunal.

13. There is no doubt that Exhibit-F is the only document relied upon by the petitioner Jahura Khatun to prove that being the daughter of Ala Uddin Sheikh, she is an Indian citizen.

14. Now, the question arises whether the petitioner is the daughter of Ala Uddin Sheikh.

15. Exhibit-F was issued on 21st June, 2015, just before registration of the case on 07.11.2015. The witness Md. Ali Choudhury (DW-2) has stated that he issued the Exhibit-F on the basis of the voter list of 1966 and the KP Patta No.159. It may be stated that the petitioner has not produced the KP Patta No.159 before the Tribunal.

16. We have decided to agree that the learned Tribunal had rightly refused to accept Exhibit-F because the evidence of DW-2 Md. Ali Choudhury failed to inspire confidence. It is clear from his evidence that he issued the Exhibit-F stating that the petitioner Jahura Khatun is the daughter of Ala Uddin Sheikh, only on the request of Jahura Khatun without any proper documents in support of that fact. Exhibit-F is a document manufactured to support the contention of Jahura Khatun. But the document failed in its purpose.

17. Now, we have sufficient reasons to hold that the petitioner Jahura Khatun failed to prove her link with her projected father Md. Ala Uddin Sheikh.

18. We are of the opinion that the impugned opinion of the Tribunal does not have any jurisdictional error. The learned Tribunal has correctly appreciated the evidence and arrived at a correct finding.

19. We find that the present writ petition being devoid of merit stands dismissed and disposed of accordingly.

20. The interim order passed earlier on 08.02.2021 is hereby vacated/ recalled.

21. Send back the records of F.T. (5th) 278/2016 (Old Case No.IMDT Case No.1770 of 1997) to the Foreigners' Tribunal-5th, Barpeta along with a copy of this order. Also

communicate this order to the Deputy Commissioner, Barpeta and the Superintendent of Police (Border), Barpeta for their needful.

JUDGE

JUDGE

Comparing Assistant