

GAHC010264132018



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

Case No. : WP(C)/8243/2018

JAMILA KHATUN @ JUMILA KHATUN
D/O- LATE AJMAT ALI, W/O- LATE MANNAN ALI, VILL- BAKRIKUCHI, P.O-
JOYSAGAR, P.S- MUKALMUA, DIST- NALBARI, ASSAM, PIN- 781337

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 110001

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

3:THE DEPUTY COMMISSIONER
NALBARI
PIN- 781335

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

5:THE STATE COORDINATOR
NRC
ASSAM
GUWAHATI- 781005

6:THE SUPERINTENDENT OF POLICE (B)
NALBARI
DIST- NALBARI- 78133

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. A MATIN,MR H AHMED

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

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the petitioner : Mr. A. M. Ahmed Advocate.

For State respondent Nos.2 & 4 : Ms. A. Verma, SC, FT

For respondent No.3 : Mr. P. Sarmah, Senior Govt. Advocate

For respondent No.4 : Mr. A.I. Ali, SC, ECI.

Date of hearing : 28.10.2024.

Date of judgment : 11.11.2024

JUDGMENT AND ORDER

(CAV)

Heard Mr. A. M. Ahmed, learned counsel for the petitioner. Also heard Ms. A. Verma, learned standing counsel for the Home Department, representing respondent nos. 2 and 4; Mr. P. Sarmah, learned Govt. Advocate for the respondent no.3; and Mr. A.I. Ali, learned standing counsel for the respondent no.4.

2) Although the respondent no.5 is a State authority, but neither the Govt. Advocate nor the standing counsel for the Home Department of the State have instructions to appear for it. Hence, the Court is constrained to record that

the respondent no.5 has defaulted in entering appearance when the matter was called.

3) By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Jamila Khatun *alias* Jumila Khatun has assailed the opinion dated 24.09.2018, passed by the learned Member, Foreigner's Tribunal No.2, Nalbari in F.T. (Nal-2) Case No. 67/2017, arising out of reference bearing F.T. Case No.303/2010, thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream.

4) On receipt of a notice of appearance, the petitioner submitted her written statement on 07.04.2017 along with 13 documents, denying that she is a foreigner and claimed that her parents are late Ajmat Ali and late Maharjan and that she was born in Village Bardhap under 60 No. Kandhdari- Dagapara Gaon Panchayat in the District of Nalbari. The petitioner also projected that the name of her parents were enlisted in the voter list of 1966 and 1970 in Village Sidhuni under Jania LAC. In support of her stand, the petitioner had examined 4 (four) witnesses, viz., (1) herself as DW-1 and had exhibit 13 document; (2) Jahuruddin as DW-2 (3) Kamal Barua as DW-3; (4) Sultan Mahmud as DW- 4; (5) Kartik Kalita as DW-5; and (6) Ratish Ramchiary as DW-6.

5) However, in paragraph-4 of the impugned opinion, the learned Tribunal has mentioned that the petitioner has adduced the evidence of 5 (five) witnesses impugning herself and exhibited 13 (thirteen) documents and in paragraph-8 of the impugned opinion, all the 13 documents are referred to. However, in paragraph-10 of the said opinion under the heading "decision and reasons thereof", the learned Tribunal has briefly discussed only the evidence of DW-2 and DW-4 and has referred only to the certificate issued by the Secretary 60 No. Kandhdari- Dagapara Gaon Panchayat (Ext.1) and voter list of 1989

(Ext.7).

6) Thus, the learned Member, Foreigner's Tribunal No.2, Nalbari, has failed to discuss the evidence of DW-1, DW-3, DW-5 and Dw-6 and the said learned Tribunal has also failed to discuss the exhibit Nos. 2 to 6 and 8 to 13. Under the circumstances the Court is of the unhesitant view that the learned Tribunal has not properly appreciated the documents and evidence adduced by the petitioner and as such, the impugned opinion dated 24.09.2018 is held to be not sustainable on facts and in law. Therefore, the said impugned opinion dated 24.09.2018, passed by the learned Member, Foreigner's Tribunal No. 2, Nalbari in F.T.(Nal-2) Case No. 65/2017, is hereby set aside and direct that the matter be remanded back to the said learned Tribunal, which would be required to re-appreciate the evidence and give a fresh opinion in accordance with law.

7) We direct the petitioner to appear before the Foreigner's Tribunal No. 2, Nalbari on or before 06.12.2024 without fail and by producing a certified copy of this order, await for the further directions from the said learned Tribunal.

8) In order to ensure the appearance of the petitioner before the learned Tribunal, we further direct the petitioner, namely, Jamila Khatun *alias* Jumila Khatun to appear before the Office of the Superintendent of Police (Border), Nalbari within 30.11.2024 during office hours and on her appearance she shall also submit a bail bond of Rs.5,000/- with one local surety of the like amount to the satisfaction of the said authority. Further, the Superintendent of Police (Border), Nalbari, is directed that on appearance of the petitioner within the period indicated above, the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner shall be obtained, whereafter, she shall be allowed to remain on bail.

9) On her appearance before the Superintendent of Police (Border), Nalbari, as directed above, the said authority shall obtain necessary information and documentation as required under the Rules from the petitioner for securing her presence.

10) It is made clear that on default of the petitioner to appear before the Superintendent of Police (Border), Nalbari within 30.11.2024 and to appear before the learned Foreigner's Tribunal within 06.12.2024, it would be open for the Police Authorities to take the petitioner into the custody and to produce her before the concerned Tribunal at the earliest.

11) The learned Standing Counsel for the Home Department shall transmit a downloaded copy of this order to the Superintendent of Police (Border), Nalbari.

12) This writ petition is allowed to the extent as indicated above by reminding the matter for a fresh decision.

JUDGE

JUDGE

Comparing Assistant