GAHC010144952018

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

Case No. : WP(C)/5134/2018

NURJAHAN BIBI
W/O- MD. CHELAMAT ALI, VILL- NARAYAN GAON, P.S. GHOGRAPAR,
DIST- NALBARI(ASSAM), PIN- 781369

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE HOME AFFAIRS, NEW DELHI- 110001

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

3:THE SUPERINTENDENT OF POLICE (B)
NALBARI
ASSAM
PIN- 781337

4:THE DY. COMMISSIONER
NALBARI
ASSAM
PIN- 781335

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

6:STATE COORDINATOR
NRC
ASSAMM
GHY

7:THE FOREIGNERS TRIBUNAL-4
NALBARI AT GHOGRAPAR
PO GHOGRAPAR
DIST- NALBARI
ASSAM
PIN- 78136

Advocate for the Petitioner : MR. S C PANDIT, SC, F.T (R2TO4),SC, ELECTION COMMISSION. (R5),SC, NRC (R6)

Advocate for the Respondent : ASSTT.S.G.I. (R1),

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

05.11.2026

(K. R. Surana,J)

Heard Mr. S. C. Pandit, learned counsel for the petitioner as well as all the respondents.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely Nurjahan Bibi, has assailed the impugned opinion dated 06.06.2018, passed by the learned Member, Foreigner's Tribunal, 4th, Nalbari (Ghograpar), Assam, in F.T. Case No (Gh) 903/2017, arising out of S.P. (B) Reference No. 19/2017, by which the petitioner was declared as an illegal migrant.

3. Pursuant to the order passed earlier, the records of the Tribunal are received. The same has been perused.

4. It is stated that the learned standing counsel for the Border and FT matters has made his submissions in support of the impugned opinion. It is submitted that the petitioner has failed to establish that she and her father was residing in the country and that most of the exhibited documents are of period which are post 25.03.1971 and therefore such documents are not relevant for the purpose of deciding the issue of citizenship. Accordingly, it is submitted that the nature of pleadings and evidence in respect of the petitioner, which is available on record, does not warrant any interference of this Court.

5. In view of the order of remand proposed to be passed by this Court, the pleadings and the evidence on record have not been discussed in the impugned opinion.

6. It is suffice to mention that as per the records, on receipt of the notice of the proceedings, the petitioner has appeared and filed her written statement and in support of her defence, the petitioner has adduced her evidence as DW1 and by filing her evidence on affidavit, the petitioner has exhibited relevant documents. The following documents are quoted below:-

(i) Exhibit-1: Photostat copy of a certified copy of voter list of 2017 the name Nurjahan Bibi wife of Selamat, age 39 years of Village Narayangaon proved in origin.

(ii) Exhibit-2 Photostat copy of a certified copy of voter list of 1997 the name Nurjahan Bibi wife of Selamat, age 30 years of Village Narayangaon proved in origin.

(iii) Exhibit-3: Photostat copy of Gaon Panchayat Secretary certificate dated 13/06/2015, age 44 years proved in origin.

(iv) Exhibit-4: Photostat copy of a certified copy of voter list of 1971 the name Khan Mamud son of Ibrahim Ali, age 30 years of Village Boralkuchi proved in origin.

(v) Exhibit-5 Photostat copy of a certified copy of voter list of 1966 the name Khan Mamud son of Ibrahim Ali, age 30 years of Village Boralkuchi proved in origin.

(vi) Exhibit-6: Photostat copy of a School certificate, left the School 31/03/1956 issue date 01/06/1979 the name Khan Mahmud son of Ibrahim Ali of village Boralkuchi proved in origin.

(vii) Exhibit-7: Photostat copy of an Annual Khiraj Patta 1964/65 year the name Khan Mahmud son of Ibrahim Ali proved in origin.

(viii) Exhibit-8: Photostat copy of a Bank pass book issue date 10/08/2017 the name Nurjahan Bibi of village Narayan Gaon proved in origin.
(ix) Exhibit-9: Photostat copy of a Bank pass book issue date 08/04/2015 the name Nurjahan Begum of village Narayangaon proved in origin.
(x) Exhibit-10: Certificate of Gaonburah dated 28/01/2018 the name Nurjahan Bibi of village Boralkuchi in origin.
(xi) Exhibit-11: Photostat copy of PAN Card proved in origin.

7. Moreover, the petitioner has also examined one, Bhabra Ram Boro, of Village Narayan Gaon and Baralkuchi as DW2, who had exhibited his certificate as Ext.10 and signature thereon.

8. The learned Tribunal without disclosing the pleadings or the evidence examined by the petitioner, clearly extracted the nomenclature of the document which were exhibited as exhibits-1 to 11 and proceeded to discard exhibits-4, 5, 6 and 7 which were of Khan Mamud and other Executive members 1 to 3 and 8, 9, 10 and 11 which were for the period for 1997 to 2018, for the petitioner that was discarded in post 1971 document and on the ground that there were no documents for a period of 24 years from 1972 to 1996 to link the name of the petitioner with her projected father.

9. As stated above, neither the pleadings and evidence of the petitioner is duly produced, nor the evidence of DW-2 is discussed. This, in the considered opinion of the Court vitiates the impugned opinion in the absence of any discussion on the evidence which includes the examination-in-chief as well as cross-examination.

10. The Court is of the further considered opinion that in a proceeding before the learned Foreigners Tribunals, as the issue of citizenship is involved, duty is cast on the learned Tribunal to appreciate the pleadings and the evidence on record, and then arrive at a decision, declaring the status of the petitioner. In this present case, the petitioner was declared to be a foreigner of

Post 25.03.1971 stream merely by a one-line reference to the exhibited documents.

11. Accordingly, as the impugned opinion is found to be vitiated by non-discussion of the pleadings and evidence on record, the Court is inclined to set aside and quash the impugned opinion dated 06.06.2018, passed by the learned Member, Foreigner's Tribunal, 4th, Nalbari (Ghograpar), Assam, in F.T. Case No (Gh) 903/2017, arising out of S.P.(B) Reference No. 19/2017.

12. The matter is remanded back to the said learned Tribunal to pass a fresh opinion in accordance with law.

13. The petitioner namely, Nurjahan Bibi, who is duly represented by her learned counsel is directed to appear before the said learned Tribunal on or before 15.12.2026, and by producing a certified of the order, shall also be prepared to take bail to the satisfaction of the said learned Tribunal.

14. It is provided that, in the event, learned Tribunal considers granting bail to the petitioner, the bail order shall remain effective for 20 days from the date of the bail order, during which time, the learned Tribunal shall pass a fresh opinion in accordance with law.

15. Before parting with the records, the Court is inclined to observe that the learned counsel for the petitioner had submitted that the petitioner has some more documents. This Court while exercising certiorari jurisdiction, would not examine such documents as a Court of original jurisdiction. Therefore, it is left open to the petitioner to make an appropriate prayer before the learned Tribunal and if such a prayer is made, the learned Tribunal shall consider the same and pass appropriate order in accordance with law.

16. The Registry shall return back the Tribunals records along with a copy of the order to be make a part of record.

17. The learned Standing Counsel for the FT and Border matters shall also transmit a downloaded copy of this order to the concerned authorities for their information.

18. The writ petition stands allowed to the extent as indicated above.

19. There shall be no order as to costs.

JUDGE **JUDGE**

Comparing Assistant