GAHC010166772018

2026:GAU-AS:16516

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

Case No. : WP(C)/5147/2018

AMELA KHATUN
W/O. RUSTOM ALI, D/O. LATE NEDU MIYA, R/O. VILLAGE- BATIAMARI, P.S. BOKO, DIST. KAMRUP(R), ASSAM. DIST. KAMRUP(R), ASSAM. PIN 781123

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
KAMRUP(R)
P.O. AMINGAON
DIST. KAMRUP(R)
ASSAM
PIN- 781031.

4:THE SUPERINTENDENT OF POLICE (B)
KAMRUP(R)

P.O. AMINGAON
DIST. KAMRUP(R)
ASSAM
PIN- 781031.

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

6:THE N.R.C. CO-ORDINATOR

NATIONAL REGISTER OF CITIZEN (NRC)
ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR, MR A ALI

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,MR J PAYENG,SC, NRC,MS. A VERMA,SC, ECI,MR. D BARUAH

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

ORDER

05-11-2026

(Rajesh Mazumdar, J)

Heard Mr. A.R. Sikdar, learned counsel appearing for the petitioner. Also heard Mr. V. Sharma, learned counsel for CGC, Mr. A.J. Ali, learned Standing Counsel for ECI, Mr. G. Sarma, learned Standing Counsel for FT and Border Matters and Ms. R.B. Bora, learned Government Advocate.

2. The present is a writ petition assailing the order dated 03.07.2017 passed in BFT Case No. 54/2016, by which the petitioner had been declared a Foreigner.

3. The petition also challenges the order dated 19.02.2018 passed in Misc. Case No. 17/2017 in BFT Case No. 54/2016, by which the review petition filed by the petitioner under Sub-Clause 2 of Clause 3 (A) of the Foreigners Tribunal

Order 1964 read with Order 47, Rule-1 of the CPC, had been dismissed.

4. The records had been received from the learned Tribunal and, by an order dated 21.02.2022 passed in this writ petition, the petitioner was required to appear before the Superintendent Police (Border), Kamrup (Rural) within 15 days from 21.02.2022 and her appearance she was required to be released on bail on furnishing a bond of Rs. 5,000/- with one local surety of the like amount. The concerned Superintendent of Police, Border, was to take steps for capturing the fingerprints and iris biometrics of the petitioner. The petitioner was directed not to leave the jurisdiction of Kamrup (Rural) District without giving details of the place of destination and her place of stay to the Superintendent of Police (Border), Kamrup (Rural).

5. The proceedings in respect of the petitioner had been initiated in BFT Case No. 54/2016 on the basis of a suspicion by the police that the petitioner was an illegal emigrant since she was not able to submit essential documents to prove her nationality. The Superintendent of Police (Border) had made a reference to the learned Tribunal to ascertain whether the petitioner was an illegal emigrant. The writ petitioner herein had thereafter contested the case by filing a written statement, and during the proceedings, the petitioner has submitted oral and documentary evidence in support of her case.

6. The impugned order dated 03.07.2017 indicates that the cross-examination of the petitioner herein could not take place as she had remained absent on several occasions. The records of the learned Trial Court reveal that several adjournments had been allowed by the learned Trial Court on 28.06.2017; however, the adjournment petition filed by the petitioner without medical certification had been rejected. The final arguments were heard on the same day. The opinion was rendered on 03.07.2017, keeping in view, as already

observed, that the petitioner did not face cross-examination. The petitioner thereafter filed Misc Case No. 17/2017 praying for review of the opinion dated 03.07.2017, and to allow the petitioner to adduce evidence in the interest of justice. The aforesaid petition had been dismissed by the order dated 19.02.2018.

7. The learned counsel for the petitioner has submitted that during the proceedings, the petitioner had filed her written statement and also adduced evidence, both oral and documentary and further that though she was unable to appear for cross-examination on different dates, appropriate petitions had been filed before the learned Tribunal, showing cause of absence.

8. The learned counsel has submitted that the petitioner deserves an opportunity to face cross-examination on her evidence and also to adduce additional evidence, which she was unable to produce when the learned Tribunal refused to condone her absence, and had proceeded to hear the arguments on a date when the petitioner had prayed for accommodation.

9. Referring to the orders passed in the review petition, the learned counsel has submitted that while it is true that the responsibility to prove the allegations against a proceeding in the learned Tribunal rests on the proceedee, in the present case, the petitioner had attempted to participate by not only filing written statement but also by adducing her evidence and the failure of the petitioner to appear for cross-examination was required to be condoned and it would be in the interest of justice, that the learned Tribunal be directed to render a fresh opinion, after allowing the opportunity of facing cross-examination to the petitioner and also allowing her the opportunity to produce such documents as may be necessary to repel the doubt that she is not an Indian citizen.

10. The learned counsel for the petitioner has submitted that the reasoning of the learned Tribunal to reject the certified copy of the voters list of 1966, only on the grounds that the same did not contain any registration numbers, is an incorrect appreciation of evidence. The authenticity of the voters list of 1966 was an apparent certified copy, and even as of today the petitioner is in possession of a certified copy of the same voter list, which has the registration number.

11. The learned counsel has submitted that, in any view, since a fresh certified copy of the voter lists is now in possession of the petitioner, the petitioner may be allowed to produce the same before the learned Tribunal and the learned Tribunal be directed to take the same into account, if required, by discarding the earlier certified copy which did not contain a registration number.

12. He has accordingly submitted that the impugned opinion dated 03.07.2017 in BFT Case No. 54/2016 be set aside and the order dated 19.02.2018 in Misc Case No. 17/2017 may also be set aside and that the matter may be remanded back to the learned Tribunal to take on record the certified copy of the voter lists of the year 1966 in place of the earlier certified copy and further to fix a date allowing the petitioner to face cross examination and, thereafter, upon hearing the learned counsel for the parties, to render a fresh opinion.

13. The learned counsel appearing for the Border and FT Matters has supported the opinion dated 03.07.2017 and has submitted that despite the fact that the petition did not stand for cross-examination, the learned Tribunal had taken into account the statements made in the writ petition as well as the documentary evidence produced by the petitioner and had thereafter rendered the opinion. He has submitted that the documentary evidence adduced by the petitioner before the learned Tribunal did not go unheeded.

14. He submits that, therefore, no fault can be found with the opinion dated 03.07.2017 passed in BFT Case No. 54/2016. By referring to the order dated 19.02.2018, the learned counsel has submitted that it is a matter of record that despite several opportunities, the petitioner did not appear for cross-examination and, therefore, the rejection of the prayer for review by the order dated 19.02.2018 also did not merit any consideration. He has accordingly paid for the dismissal of the writ petition.

15. Having heard the learned counsel for the parties and having considered the materials on record, including the Trial Court Records, we have noticed that the learned Trial Court had rejected the certified copy of the voters list of 1966 under 55 number Boko constituency on the ground that the same did not contain a registration number allotted by the concerned authority. The learned Tribunal has opined that it is crystal clear that the certified copy of the voters list of 1966 of her father was not valid as it was without registration.

16. We cannot agree with the opinion of the learned Tribunal on the certified copy of the voters list of 1966. The certified copy submitted by the petitioner of the voters list of 1960, as available in the Trial Court Records, reveals that the same carried the date of application for copy, the date fixed for notifying the requisite number of stamps and folios, date of delivery of the requisite stamps and folios, the date on which the copy was ready for delivery and the date on which the copy was made over to the applicant. The certified copy contains the signature and seal of the copyist, the person who compared it, as well as the seal and signature of the electoral registration officer certifying that the same was a certified true copy. The mere absence of the registration number, which is given by the office to refer to the application made, cannot render the certified copy to be invalid on that ground alone.

17. In such a view of the matter, the opinion of the learned Tribunal itself holding the certified copy of the voter list of 1966 to be invalid only on the ground that the same did not carry a registration number cannot be sustained. Even otherwise, the petitioner has submitted that the certified copy of the same portion of the voter list has now been made available to her and of which she is in possession, by giving her a registration number, and the certified copy of the voter's list of 1966 containing the name of her projected grandfather still remains the same.

18. In so far as the prayer of the petitioner for being afforded a chance to stand cross-examination is concerned, we are of the considered view that although no fault can be found with the learned Tribunal closing the opportunity of cross-examination to the petitioner on the basis of her continued absence before the learned Tribunal, the ends of justice would be met if the petitioner is allowed to face cross examination, on the matter being remanded back to the tribunal for rendering a fresh opinion, by accepting the validity of the certified copy of the voter list of 1966 as given by the petitioner.

19. Therefore, we set aside the opinion dated 03.07.2017 passed in BFT No.54 of 2016 and, consequently, the order dated 19.02.2018 passed in Misc Case No.17/2017 is also interfered with and set aside. We impose a cost of Rs. 2000/- on the petitioner, to be deposited with the District Legal Services Authority of the concerned district on or before the 17th of December, 2026.

20. The BFT Case No.54 of 2016 is remanded back to the Foreigners Tribunal No.2, Boko, Kamrup to take up the matter afresh from the stage of allowing the petitioner herein, as the proceedee therein, to submit the certified copy of the relevant portion of the voter list of 1966 on record in addition to the certified copy of the voter list of 1966 submitted earlier and, thereafter, allow the

petitioner to face cross-examination on a date to be fixed by the learned Tribunal and, thereafter, to hear the submissions on behalf of the parties and render a fresh opinion regarding the citizenship of the petitioner.

21. To make matters convenient, the petitioner shall appear before the learned Tribunal on or before the 18th of December, 2026 along with a certified copy of this order and the certified copy of the relevant portion of the voter list of 1966. Subject to the petitioner depositing costs of Rs. 2,000/- before the District Legal Services Authority of the concerned District and producing the receipt thereof before the learned Tribunal, the learned Tribunal shall take up the proceedings from the stage indicated above.

22. On such appearance, the learned Tribunal shall accept the certified copy of the voter lists indicated above and fix a date for the cross-examination of the petitioner. Upon completion of the cross-examination of the petitioner, the learned Tribunal shall thereafter proceed in accordance with law to hear the parties and render its opinion, within an outer limit of three months from the date of appearance of the petitioner.

23. The bail granted to the petitioner on 21.02.2022 in WP (C) No. 5147/2018 shall remain operative till 18.12.2026 and, in the event the petitioner appears before the learned Tribunal on or before said date, the bail shall continue till the disposal of the proceedings before the learned Tribunal, if circumstances do not require the recalling of the bail.

24. In the event the petitioner fails to appear before the learned Tribunal on or before 18.02.2026, the bail granted by this Court on 21.02.2022 shall stand recalled, and the learned Tribunal would be at liberty to close the proceedings without further ado.

25. The learned Tribunal records be returned forthwith, along with a copy of this order.

26. The writ petition is disposed of, leaving the parties to bear their own costs.

JUDGE **JUDGE**

Comparing Assistant