

(2023) 04 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2515 Of 2021

Aklima Khatun

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 03-04-2023

Acts Referred:

Citation : (2023) 04 GAU CK 0008

Hon'ble Judges : Achintya Malla Bujor Barua, J; Robin Phukan, J

Bench : Division Bench

Advocate : D Ghosh

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 & 4 being the Union of India, Mr. G. Sarma, learned Counsel appearing for the Home Department of Government Assam for the respondent No.2, 6, 7 & 8, Mr. A.I. Ali, learned counsel for the respondent No.3 being the Election Commission of India and Ms. U. Das, learned Advocate for the respondent No.5 being the Deputy Commissioner, Bongaigaon.

2. The petitioner, namely, Aklima Khatun has been referred to the Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of case No. BNGN/FT/93/2013. The Tribunal rendered an opinion dated 22.10.2021 declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. In the Writ Petition, the petitioner relies upon the Voters List of 1965 of Village Bonbahar, Police Station Barpeta in Betbari Mouza of Barpeta District, which contains the name of Abul Hussen son of Rahmat Hussen at Sl. No.52 and Aliman Nessa wife of Abul Hussen at Sl. No.53 and both are shown to be residing in the

same House No.13. Similar Voters List is relied upon in respect of 1970 of Village Bonbahar. The petitioner also relies upon the Voters List of 1993 of Village Bonbahar containing the name of Fazlul Hoque son of Abul Hussain at Sl. No.192 and that of Alimon Nessa wife of Abul Hussain at Sl. No.193 and both are shown to be residing in the House No.105 (Ka).

4. By relying upon the Voters List of 1965, containing the name of Abul Hussain and Aliman Nessa together and that of the Voters List of 1993 containing the name of Fazlul Hoque and Alimon Nessa in the same Voters List, it is claimed that Fazlul Hoque being the son of Abul Hussain of the Voters List of 1965 is a citizen of India.

5. As regards the petitioner, reliance is placed on a School Transfer Certificate of the Kayakuchi Higher Secondary School which contains the name of Aklima Khatun, daughter of Fazlul Hoque of Village Bonbahar as well as the Kabilnama issued by the Barpeta District Mahkama-E-Shariah, which contains the name of the bride to be Aklima Khatun, daughter of Fazlul Hoque of Village Bonbahar to establish that petitioner Aklima Khatun is the daughter of Fazlul Hoque of Village Bonbahar. But neither the Principal of the Kayakuchi Higher Secondary School nor the authority of Barpeta District Mahkama-E-Shariah who had issued the Kabilnama have been examined by the Tribunal.

6. Accordingly the matter is remanded back to the Tribunal to enable the petitioner to examine the Principal of the Kayakuchi Higher Secondary School as well as the authority issuing the Kabilnama under the Barpeta District Mahkama-E-Shariah to render evidence that she is the daughter of Fazlul Hoque of Village Bonbahar.

7. The respondents in the Home Department may also verify the aforesaid claim and make their submission as well as to submit a report before the Tribunal that Aklima Khatun whose name is referred in the School Transfer Certificate and the writ petitioner proceedee Aklima Khatun are one and the same person.

8. The petitioner to appear before the Tribunal on 26.05.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 22.10.2021, passed in case No. BNGN/FT/93/2013 and if it is against her, the consequence under the law may follow.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

10. The petition stands allowed as indicated above. Send back the LCR.