
(2019) 02 GAU CK 0062
In the Gauhati High Court
Case No : Writ Petition (C) No. 5158 Of 2018

Jamila Khatun

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 20-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0062

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : M.U. Mahmud, A Ali, A. Kalita, A Verma, G Sarma

Judgement

AM Bujor Barua, J

1. Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. A. Kalita, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas, Ms. A Verma, learned standing counsel for the authorities under the NRC as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police (B), Darrang, F.T.(V) Case No. 277/2015 was registered against the Foreigners Tribunal No.5, Darrang, Mangaldoi, Assam.

3. Before the Tribunal, the petitioner submitted a written statement and took a stand that the name of her father is Md. Abdul Jalil and that of her mother is Kulson Bibi and the name of her grandfather is Golap Ali. A stand was also taken that the name of the father of the petitioner appeared in the voter list of 1966 of village Padopari, P.S. Dalgaon, District- Darrang and also in the voter list of 1971 of the same village. Abdul Jalil, whom the petitioner claims to be her father had deposed as DW-2 stating that the petitioner is his own daughter. The name of DW-2 is shown to be Abdul Jalil, son of Golap Ali, village Baligaon, P.S. Dalgaon, district- Darrang.

4. In the aforesaid situation, a question arises as to whether Abdul Jalil, son of Golap Ali, village-Baligaon who had deposed as DW-2 is the same person as that of Azalil, son of Golap of voter list of 1971 of village Padopari. In this respect, a statement of DW-2 in cross-examination is also taken a note of that prior to 17/20 years ago, he was a resident of village Padopari. As in the absence of any material to arrive at a definite conclusion that DW-2 Abdul Jalil, son of Golap Ali and Azalil, son of Golap of 1971 voter list of village Padopari are the same person or not, a definite view cannot be taken as to whether the petitioner had established a link with Azalil, son of Golap of voter list of 1971 of village-Padopari.

5. Consequently, the matter is remanded back to the Tribunal allowing the petitioner to adduce any further evidence to show that DW-2 Abdul Jalil, son of Golap Ali of village- Baligaon and Azalil, son of Golap of voter list of 1971 of village-Padopari are the same person or not. If appropriate materials are produced that both of them are the one and the same person, DW-2 shall be subjected to further cross-examination to verify as to whether the petitioner is his own daughter or not.

6. Upon such exercise, the Tribunal shall pass a reason order within a period of 15(fifteen) days from the date of appearance of the petitioner and such order shall prevail over the earlier order dated 27.03.2018 as the petitioner is in detention. The Superintendent of Police (B), Darrang shall ensure the presence of the petitioner before the Foreigners Tribunal No.5, Darrang on 26.02.2019 and upon her appearance, the Tribunal would pass an order whether she is further required to be kept in detention or she is to be released.

7. LCR be transmitted forthwith to the Foreigners Tribunal No.5, Darrang by a special messenger for which the cost would be borne by the petitioner. If the records are available before the Tribunal on 26.02.2019, the requirement as indicated above shall be commenced from the said date.