

(2023) 08 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6705 Of 2021

Jamila Khatun

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Evidence Act, 1872 — Section 50, 137

Citation : (2023) 08 GAU CK 0014

Hon'ble Judges : Achintya Malla Bujor Barua, J;Mitali Thakuria, J

Bench : Division Bench

Advocate : I Alam

Final Decision : Disposed Of

Judgement

1. Heard Mr. T Sk., learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 6 and 8 being the authorities under the Home Department of Government of Assam and Mr. AI Ali, learned counsel for the respondents no. 3, 5 and 7 being the authorities under the Election Commission of India.

2. The petitioner Jamila Khatun had been referred to the Foreigners' Tribunal No. 5, Darrang for rendering an opinion as to whether she is a foreigner under the Foreigners' Act, 1946 resulting in registration of FT(V) 277/2015. The Tribunal rendered an opinion dated 23.04.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Podopari Mouza Pachim Dalgaon in the present Darrang district which contains the name of Ajlil S/O Golap at Sl. No. 353. It is claimed that Ajlil is the father of the petitioner. The petitioner also relies on the voters' list of 1971 of village Padopari which contains the name of Golap Ali S/O Sarifulya at Sl. No. 388, Amena Bibi S/O Golap at Sl. No. 389, Azalil S/O Golap at Sl. No. 390 and

that of Kulsom Bibi W/O A. Jali at Sl. No. 391 where all are residing in the same house no. 80.

5. To substantiate that Ajlil is the father of the petitioner, reliance is placed on a certificate available at page-50 of the writ petition, issued by the Secretary of the Baligaon Gaon Panchayat wherein it is certified that Jamila Khatun is the daughter of Abdul Jalil of village Baligaon. Another certificate available at page-55 is also relied upon, issued by the Gaon Burha certifying that Jamila Khatun is the daughter of A. Jalil of village Baligaon.

6. None of the certificates can be accepted to establish that Abdul Jalil of Baligaon village is the father of the petitioner. The relevant provisions to establish a relationship is provided under Section 50 of the Evidence Act wherein it is provided that a relationship can be established by recording evidence of a member of the family or any other person who has a special means of knowledge of the existence of the relationship.

7. The certificates of the Secretary and the Gaon Burah do not satisfy the requirement of Section 50 of the Evidence Act inasmuch as no special means of knowledge of the person issuing the certificates is brought on record which may satisfy the requirement of Section 50 of the Evidence Act.

8. But, however, reliance is also placed upon the evidence rendered by Md. Abdul Jalil S/O Lt. Golap Seikh R/O Village- Baligaon as DW2 wherein it had been deposed that the petitioner Jamila Khatun is the daughter of Abdul Jalil. But it is noticed that Ajlil of the 1966 voters' list is of village Podopari whereas Abdul Jalil DW2 is of village Baligaon. Although nothing was stated in the examination-in-chief as regards how Ajlil of the 1966 voters' list of village Podopari is DW2 Abdul Jalil of village Baligaon but the State in its wisdom deemed it appropriate to cross examine DW2 to extract the information that Abdul Jalil had shifted to village Baligaon about 17-20 years back.

9. It is intriguing as to why the State authorities are cross examining the witness of the proceedee in such manner so that the lacuna that may have been in the evidence rendered in the examination-in-chief is sought to be filled up by the State authorities by putting appropriate questions in the cross examination so that the lacuna of the proceedee itself can be filled up. Section 137 of the Evidence Act provides for examination-in-chief and cross examination i.e. the examination of a witness of a party who calls him shall be called his examination-in-chief and the examination of a witness by the adverse party shall be called his cross examination. The purpose of cross examination under the law is to enable the other party to rebut or bring down the veracity of the evidence that may have been rendered by one of the parties in their examination-in-chief. Cross examination cannot be understood to be a requirement of the other party to come in an aid of a party deposing in their examination-in-chief so that whatever shortcoming or lacuna is there in the examination-in-chief would be filled up.

10. Considering the nature of the cross examination made by the State

authorities in respect of the witness DW2 Abdul Jalil S/O Lt. Golap Ali of village Baligaon, the evidence in cross examination of DW2 Md. Abdul Jalil is unacceptable and declared to be unreliable. In the circumstance, to allow the State authorities a fair opportunity to rebut the evidence rendered by DW2 Md. Abdul Jalil in the examination-in-chief the matter stands remanded back to the Tribunal to enable the State authorities to cross examine the DW2 Abdul Jalil S/O Lt. Golap Ali of village Baligaon in an appropriate manner as required under the law.

11. This order be brought to the notice of the Principal Secretary to the Home Department of the Government of Assam to ensure that the State authorities do not indulge in such acts of cross examination so as to come to an aid of the proceedees in the garb of cross examination and to conduct the cross examination in the manner as required under the law. A copy of this order be circulated to all the Tribunals. The Tribunals are directed that in the event in the evidence rendered by the witnesses of the proceedees any lacuna is noticed but the State authorities through their cross examination seek to fill up such lacuna, it is for the Tribunal to pass appropriate order in conducting the proceeding that cross examination of such nature do not take place, unless the State authorities admit the claim of the proceedees and the cross examination is used as a means of bringing the admission on record.

12. The matter accordingly stands remanded back to the Tribunal to enable the State authorities to cross examine the DW2 Abdul Jalil S/O Lt. Golap Ali of village Baligaon DW2. The State authorities may also make their own verification and submit a report before the Tribunal. Upon doing the needful, a reasoned order be passed by the Tribunal.

13. The petitioner to appear before the Tribunal on 18.09.2023.

14. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 23.04.2019 passed in FT(V) 277/2015 and if against, consequence under the law is applicable to the petitioner.

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

16. A copy of this order be provided to Mr. G Sarma, learned counsel for the Home Department of Government of Assam.

Send back the LCR.

Writ petition stands disposed of in the above terms.