

---

**(2015) 06 GAU CK 0058**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 608 of 2011**

Jubeda Khatun

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

---

**Date of Decision :** 23-06-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2015) 06 GAU CK 0058

**Hon'ble Judges :** Biplab Kumar Sharma, J

**Bench :** Single Bench

**Advocate :** D.P. Chaliha, Senior Advocate and U. Chaliha, for the Appellant; S.C. Keyal, ASGI and H.M. Phukan, G.A., Advocates for the Respondent

**Final Decision :** Dismissed

---

## Judgement

Biplab Kumar Sharma, J—By means of this writ petition, the petitioner has challenged the judgement and order dated 27/10/2010 of the learned Member, Foreigners Tribunal No. 1, Morgiaon passed in FT(D) Case No. 745/2007 [ERO Reference No. MYC 29/97/Case 2080] [Police Reference D/N Case No. 196/1997] (State Vs. Mustt. Jubeda Khatun). According to the petitioner, she is an Indian citizen and her parents were residing at village Nakhola grant under Nagaon district (presently Morigaon district) till their death. Although the petitioners has referred to Annexure-A & B voter lists of 1965 and 1971 respectively but in the voter list of 1965, names appearing are that of Babur Ali and Kuchirma Bibi. There is no statement in the writ petition as to how the said 2 (two) persons are related to the petitioner. That apart, both the Annexure-A and B are photocopies without any seal of the issuing authority.

2. In 1971 voter list, the name of one Md. Joynal appears whom the petitioner identifies as her husband. The name of Joynal Ali and Jubeda Begum (claims to be petitioner) appear in the voter list of 2008 showing their age as 57 and 48 respectively. The name of the petitioner is Mustt. Jubeda Khatun and not Jubeda Begum. The petitioners have also enclosed the voter list of 1997 (photocopy and

extract only) showing the names of Joynal Ali and Jubeda Khatun, aged 55 and 42 respectively. On the other hand, in Annexure-B voter list of 2004, they were 57 and 48 respectively. Apart from the fact that in the said voter list of 2008 the name of one Jubeda Begum appears and not that of Jubeda Khatun, in the voter list of 1997, the name of Jubeda Khatun appears.

3. Surprisingly, as against the father's name as Nur Mohammad of the petitioner's husband Joynal Ali appearing in the voter list of 2008 (Annexure-B), in the Annexure-A voter list of 1997, Joynal Ali's father is one Babul.

4. Above are the documents, on the basis of which the petitioner claiming herself to be aged 50 years on the date of filing the writ petition on 31/01/2010, claims to be an Indian citizen. However, the document on which she has placed reliance i.e. the aforesaid voter lists of 2004, 1997, her age was recorded as 48 and 42 respectively.

5. The learned Tribunal answering the reference and discussing the evidence on record found that although the petitioner claimed to be an Indian citizen with the assertion that her name was included in the voter list of 1970 but failed to prove the same. In the proceeding before the Tribunal, she submitted only certified copy of the voter list of 2008 and where the name of one Jubeda Begum appeared. As discussed in the impugned judgement, except the photocopy of the said voter list, she failed to produce any other documents though she claimed that she had cast vote on 3 (three) occasions after her marriage with Joynal. The Tribunal also found that the certified copy of the Jamabandi which the petitioner had produced claiming herself to be a pattadar but in the said document, her husband's name was different (Ext. Gha). In the said document, one Jubeda Khatun is shown as wife of one Unis Munsu. The petitioner also failed to prove the documents as required under the law of evidence.

6. The Apex Court in *L.I.C. of India and Another Vs. Ram Pal Singh Bisen*, (2010) 125 FLR 325 : (2010) 3 JT 53 : (2010) 2 SCALE 121 : (2010) 4 SCC 491 : (2010) 1 SCC(L&S) 1072 : (2010) 3 SCR 438 : (2011) 1 SLJ 201 : (2011) 2 SLR 792 : (2010) 3 UJ 1354 , has held thus:-

"31. Under the Law of Evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the Court. Contents of the document cannot be proved by merely filing in a court."

7. Although it is not for this Court to decide the citizenship of the petitioner but in this proceeding the petitioner failed to produce any document, so as to show any semblance of her Indian citizenship. Needless to say that the particular findings arrived at by the Tribunal based on facts and evidence, cannot be lightly interfered with exercising writ jurisdiction. In this connection, Para 112 of the Full Bench decision in *The State of Assam and Others Vs. Moslem Mondal and Others*,

(2013) 1 GLT 809 may be referred to which is reproduced below:-

"112. Article 226 of the Constitution confers on the High Court power to issue appropriate writ to any person or authority within its territorial jurisdiction. The Tribunal constituted under the 1946 Act read with the 1964 Order, as noticed above, is required to discharge the quasi-judicial function. The High Court, therefore, has the power under Article 226 of the Constitution to issue writ of certiorari quashing the decision of the Tribunal in an appropriate case. The scope of interference with the Tribunal's order, in exercise of the jurisdiction under Article 226, however, is limited. The writ of certiorari can be issued for correcting errors of jurisdiction, as and when the inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it or if such Court or Tribunal acts illegally in exercise of its undoubted jurisdiction, or when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. The certiorari jurisdiction of the writ Court being supervisory and not appellate jurisdiction, the Court cannot review the findings of facts reached by the inferior Court or Tribunal. There is, however, an exception to the said general proposition, in as much as, the writ of certiorari can be issued and the decision of a Tribunal on a finding of fact can be interfered with, if in recording such a finding the Tribunal has acted on evidence which is legally inadmissible or has refused to admit admissible evidence or if the finding is not supported by any evidence at all, because in such cases such error would amount to an error of law apparent on the face of the record. The other errors of fact, however grave it may be, cannot be corrected by a writ court. As noticed above, the judicial review of the order passed by the inferior Court or the Tribunal, in exercise of the jurisdiction under Article 226 of the Constitution, is limited to correction of errors apparent on the face of the record, which also takes within its fold a case where a statutory authority exercising its discretionary jurisdiction did not take into consideration a relevant fact or renders its decision on wholly irrelevant factors. Hence, the failure of taking into account the relevant facts or consideration of irrelevant factors, which has a bearing on the decision of the inferior court or the Tribunal, can be a ground for interference of the Court or Tribunal's decision in exercise of the writ jurisdiction by the High Court."

8. For all the aforesaid reasons, I do not find any merit in the writ petition and accordingly, the writ petition stands dismissed. Now, the Superintendent of Police (B), Morigaon shall ensure that she is arrested and detained in the detention camp till her deportation to her country of origin i.e. Bangladesh.

9. Let the matter be listed again after one month so as to submit report by the Superintendent of Police (B) Morigaon about the action taken in the terms of this order.

10. The Deputy Commissioner, Morigaon shall ensure deletion of the name of the petitioner from the voter list, if any.

11. Registry shall send down the case records to the learned court below along

with a copy of this judgement and order. A copy of the judgement and order may also be furnished to Ms. H.M. Phukan, learned State Counsel for her immediate necessary follow up action. Copies shall also be sent to the SP(B), Morigaon and Deputy Commissioner, Morigaon, for their immediate follow up action.