
(2019) 02 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (c) No. 7824 Of 2018

Monowara Khatun

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0034

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

Bench : Division Bench

Advocate : H R A Choudhury

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. H. Ali, learned counsel for the petitioner, Mr. A Ali, learned counsel for the Election Commission of India, Mr. J. Payeng, learned standing counsel for the State of Assam appearing for the Foreigners Tribunal and Border Affairs, 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 (Border), Dhubri, FT Case No.1874/F/2017 was registered against the petitioner before the Foreigners Tribunal No.2, Dhubri. In the written statement, the petitioner took the stand that her grandfather is Rostam Ali son of Hossain Munshi and her grandmother is Solema Khatun. It was also stated that the grandfather of the petitioner married two women namely Solema Khatun @ Solemon Bibi and Somuri Khatun @ Mayuri Khatun. A stand was also taken that the father of the petitioner was from a family of four brothers and five sisters namely, Sayed Ali @ Abdul Sayed i.e. the father of the petitioner, Bellal Hossain, Abdul Kader @ Kader Ali and Rabial Hoque being the brothers and Tara Banu Bibi, Hazera Khatun, Maleka Khatun, Firoza Khatun and Sukuri Khatun being the daughters. It was also stated that the petitioner's family comprises of four sisters and three brothers namely, Saleha

Khatun, Monowara Khatun i.e. the petitioner, Soneka Khatun and Mousumi Khatun being the sisters and Golam Hossain, Ismail Hossain and Nalchand Ali being the brothers. A stand was also taken that the name of the grandfather of the petitioner appears in the voters list of 1966 and 1970 of village 209 Manirchar bearing House No.05 and 113 respectively and that the name of the father of the petitioner appears along with her grandfather Rustam Ali in the voters list of 1977 also of village Manirchar. The petitioner had exhibited the voters list of 1966 pertaining to village Manirchar, where the name of Rustam Ali age 42 years and Solema Khatun age 39 appears. In the voters list of 1970 of village Manirchar, the name of Rustam Ali age 46 and Solema Khatun age 43 appears.

3. In the voters list of 1977 of village Manirchar, the name of Rustam Ali, Solema Khatun, Sayed Ali, Shamuri Khatun, Bellal Hussien and Rahima Khatun appears against Sl Nos. 431 to 436 in respect of house No.98, where the age of Sayed Ali is shown as 28 years and Rahima Khatun as 21. Similarly, the voters list of 1985 of village Manirchar shows Abdul Sayed, age 32 and Rahima Bibi age 28 years, so does the voters list of 2010 of village Manirchar showing Sayed Ali son of Rustam Ali age 55 years and Rahima Khatun wife of Sayed Ali age 50 years.

4. Sayed Ali, whose name appears along with Rustam Ali from the same house number in the voters list of 1977 had given the evidence in chief through an affidavit stating that his father is Rustam Ali son of Hussain Munchi and his mother is Solema Khatun, where his father married two women namely Solema Khatun and Somuri Khatun @ Mayuri Khatun. It was also stated that he is from a family of four brothers and five sisters namely Sayed Ali @ Abdul Sayed i.e. he himself, Bellal Hussain, Abdul Kader @ Kader Ali and Rabial Hoque being the brothers and Tara Banu Bibi, Hazera Khatun, Maleka Khatun, Firoza Khatun and Sukuri Khatun being the sisters. Sayed Ali also stated that his daughter Monowara Khatun i.e. the petitioner was married to one Somesh Ali son of late Jasan Ali of village Phulpur village police station South Salmara by a registered Kabin Nama in the year 1990. The registered Kabin Nama had been exhibited as Exhibit-2 and the Kazi who had performed the married ceremony was examined as DW-3. The Kazi in his deposition as DW-3 had clearly deposed that the name of the father of the petitioner is Sayed Ali of village Manirchar and that he himself had solemnized the marriage through the registered Kabin Nama. He also deposed that he had exhibited the original Kabin Nama register before the Tribunal.

5. We also take note that in the cross-examination of DW-2 and DW-3, the State had in no manner controverted the evidence led by the said two witnesses, where both the witnesses had categorically stated that Sayed Ali of Manirchar village under police station South Salmara is the father of the petitioner. Taking into consideration that the name of Sayed Ali of village Manirchar appears with his father Rustam Ali, also from Manirchar village, we are of the view that the petitioner would be able to establish her link with Rustam Ali, her grandfather

whose name appears in the voters list of 1966 of village Manirchar.

6. We have perused the order dated 25.09.2018 of the Tribunal. In the order of the Tribunal, the Exhibit-2 registered Kabin Nama was rejected on the ground that the Kabin Nama was written by two different persons in two different inks and therefore, the entire evidence of the Kazi was doubted. But as regards the evidence of DW-2 Sayed Ali, being the father of the petitioner, we find that there is no discussion in the order of the Tribunal as regards the evidence rendered by him. We see no reason as to why the evidence of DW-2 Sayed Ali would not be taken into consideration by the Tribunal in arriving at its conclusion.

7. In the circumstance, we are of the view that the order dated 25.09.2018 of the Foreigners Tribunal No.2, Dhubri in FT Case No.1874/F/2017 is not sustainable for the manner in which the opinion was rendered. Upon the said order being interfered, the matter now stands remanded back to the Tribunal for a fresh adjudication by taking into consideration the evidence of DW-2 Sayed Ali, wherein it is stated that the petitioner is his daughter and further that Sayed Ali can be linked with Rustam Ali of the 1966 voters list and also the registered Exhibit-2 Kabin Nama and the evidence of DW-3 Kazi.

8. As the State respondents are expressing a doubt on the evidence of DW-3, the State would be at liberty to cross-examine the DW-3 in any manner in order to arrive at the correctness of the evidence being rendered by him. Further as an objection has also been raised on the genuineness of the Exhibit-2 registered Kabin Nama to the extent that it is being written by two different persons in two different inks, the State would be at liberty to cross examine the DW-3 Kazi in order to find out the correctness and genuineness of the Exhibit-2 registered Kabin Nama. Apart from recalling the DW-2 and DW-3 for further cross-examination, no further evidence shall be admitted by the Tribunal from the petitioner.

9. The petitioner shall now appear before the Tribunal on 18.03.2019 and upon her appearance, the Tribunal will do the needful as indicated above within a period of 30 days thereafter. Any opinion to be rendered by the Tribunal shall be independent to the observation made in this order, particularly regarding the aspect as to why the evidence of DW-2 and DW-3 and Exhibit-2 were not taken into account and the decision rendered by the Tribunal shall be based on the outcome of the further cross examination that the State may make.

10. The writ petition stands allowed to the extent indicated above.

11. Return the LCR immediately.