
(2019) 02 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 7801 Of 2018

Sahera Khatun

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0033

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

Bench : Division Bench

Advocate : D Sarmah

Final Decision : Dismissed

Judgement

A.M. Bujor Barua, J

1. Heard Mr. U. Das, learned counsel for the petitioner. Also heard Mr. A.I. Ali, learned counsel for the Election Commission of India, Mr. J. Payeng, 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, Border, Goalpara, F.T. Reference Case No.988/2007 was registered. On the reference being transferred to the Foreigners Tribunal No.5 at Goalpara, it was re-numbered as F.T. Case No.F.T/5/396/MA/2016. In the written statement, the petitioner took the stand that Soleman Sheikh and Moyjan Nessa are her parents and Rahmatullah and Ahaton Nessa were her grandparents. It was further stated that the name of the parents of the petitioner were recorded in the voter list of 1966 of village Bhutkura Pt-III under Police Station-North Salmara at serial No.28. 29.

3. The petitioner also stated that the name of her parents were also recorded in the voter list of 1970 of Village-Bhutkura Pt-III under police station Abhayapuri.

4. Accordingly, the voter list of 1966 and 1970 of village Bhutkura Pt-III which contain the name of Soleman Ali Son of Lt. Rahmat Urlla aged 38 years at serial No.28 and Moyjan Nesssa wife of Soleman Ali aged 28 years at serial No.29 is relied upon. In order to establish her link with Soleman Ali of 1960 voter list village Bhutkura Part-III, the petitioner exhibited a certificate from the Secretary of Budhchar Gaon Panchayat which stated that the petitioner is the daughter of Soleman Sk and Moyjan Bewa of village Sundarpur.

5. On a query being made as to whether the person certifying the aforesaid certificate had been examined, it is stated that the Secretary of Budhchar Gaon Panchayat who had issued the certificate was not examined.

6. The petitioner further relies upon the evidence of DW-2 Abdur Rahman aged 63 son of Emrat Ali of village Basantapur to establish her link with Soleman Ali of 1966 voter list.

7. We have taken note of that firstly DW-2 is a resident of another village Basantapur and not of Bhutkura Part-III and secondly the only statement made is that the petitioner is a niece of the respondent No.2 in relation without divulging as to in what manner she is a niece. DW-2 further deposes that the petitioner was married with Baser Ali of Village Chaysimna where she stayed for about 2 years and thereupon shifted to village Basantapur where she resided 16 to 17 years and thereafter again shifted to village sundarpur.

No further material is produced as to what is the basis of the aforesaid deposition being made by DW-2.

8. In the written statement, the petitioner had taken a stand that Soleman Ali of Village Bhutkura had six children namely, Sobia Khatun, Sahera Khatun, Kanchan Mala, Hawa Khatun, Musa Sheikh and Muzammel Ali.

Neither the voter list subsequent to the voters list of 1966 of Village Bhutkura part-III which may contain the name of children of Soleman Ali nor any such children of Soleman Ali had been examined by the petitioner who could have given a more authentic evidence that she is the daughter of Soleman Ali of 1966 voter list of Part-III.

9. In the absence of any further evidence, we are unable to arrive at a conclusion that the petitioner had established a clear link with Soleman Ali of voter list of 1966 of Village Bhutkura Part-III upon which the petitioner places her link. It is further taken note of that the mother of the petitioner Moyjan Nessa was aged 28 years in 1966 and the certificate of the secretary of Gaon Panchayat gives an indication that she is still alive but inspite of it being so, Moyjan Nessa, who could have given a more authentic evidence on behalf of the petitioner had also not been examined. The Tribunal in its order also arrived at a conclusion that the petitioner had failed to establish a link with Soleman Ali of 1960 voter list.

10. In view of the above, we do not find any infirmity in the order dated 07.09.2018 of the Foreigners Tribunal No.5th Goalpara in F.T. Case No-F.T./5/396/

MA/2016.

11. Accordingly, the writ petition is found to be devoid of any merit and the same is dismissed.

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