

GAHC010195332019



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C) 5989/2019**

1:KHAIRAN NESSA @ MOYRAN NESSA  
W/O. ABDUL JALIL, @ JALILUDDIN, D/O. KHALEK ALI @ ABDUL KHALIK  
@ KHALEK AKAND @ ABDUL KHALEK AKAND, VILL. GOBARDHANA,  
MOUZA- GOBARDHANA, P.S. GOBARDHANA, P.O. GOBARDHANA, DIST.  
BAKSA (BTAD), ASSAM.

VERSUS

1:THE UNION OF INDIA AND 6 ORS.  
REP. BY THE SECRETARY, TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-01.

2:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER SECRETARY  
TO THE GOVT. OF ASSAM  
HOME DEPTT.  
DISPUR  
GUWAHATI-06.

3:THE DY. COMMISSIONER  
BARPETA P.O. AND DIST. BARPETA  
ASSAM  
PIN-781301.

4:THE SUPDT. OF POLICE (B)  
BARPETA  
P.O. BARPETA  
DIST. BARPETA  
ASSAM  
PIN-781301.

5:THE ELECTION COMMISSION OF INDIA  
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA  
NIRVACHAN SADAN ASHOKA ROAD  
NEW DELHI-110001.

6:THE STATE CO-ORDINATOR  
NATIONAL REGISTRATION OF CITIZEN  
(NRC)  
ASSAM  
BHANGAGARH  
GUWAHATI-781005.

7:THE OFFICER IN CHARGE  
GOBARDHANA POLICE STATION  
DIST. BARPETA  
ASSAM

**Advocate for the Petitioner** : MR. M U MAHMUD

**Advocate for the Respondent** : ASSTT.S.G.I.

**BEFORE**  
**HONOURABLE MR. JUSTICE MANOJIT BHUYAN**  
**HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

**ORDER**

**Date : 25-11-2019**  
**(Ajit Borthakur, J)**

Heard Mr. MU Mahmud, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing the respondent No. 1. Mr. J Payeng, learned counsel represents the respondent Nos. 2, 3, 4 and 7 whereas Ms. S Khanikar, learned counsel represents the respondent No. 6. Ms. B Das, learned counsel appears for the respondent No.5.

2. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the impugned order, dated 25.09.2018, passed by the Foreigners Tribunal 10<sup>th</sup>, Barpeta, in F.T. Case No. 152/2016, whereby the petitioner was declared to be a foreigner, who had entered into India (Assam) after 25.03.1971 from the specified territory.

3. Be it mentioned here that based on a reference made by the Superintendent of Police

(Border), Barpeta expressing doubt regarding the nationality of the petitioner, initially I.M. (D)T. Case No. 9402/98 was registered in the I.M.(D)T., Barpeta. But, after abolition of the I.M.(D)T. Act & Rules in the State of Assam in terms of ***Sarbananda Sonowal Vs. Union of India***'s case reported in **(2005) 5 SCC 665** and subsequent constitution of Foreigners Tribunals the case was transferred to the Foreigners Tribunal 10<sup>th</sup>, Barpeta and was registered as F.T. Case No. 152/2016.

4. For the purpose of discharging the burden of proof that she is not a foreigner as required under Section 9 of the Foreigners Act, 1946, the petitioner contested the proceeding by filing a written statement claiming to be an Indian citizen by birth and adduced evidence, examined three witnesses as D.Ws and exhibited 10(ten) number of documents in support of her claim of Indian Citizenship, which are as below:

1. **Exhibit- '1'**, the Voter List of 1970;
2. **Exhibit- '2'**, the Voter List of 1997;
3. **Exhibit- '3'**, the Voter List of 2008;
4. **Exhibit- '4'**, the photocopy of the Elector Photo Identity Card;
5. **Exhibit- '5'**, Certificate issued by the Gaonburha;
6. **Exhibit- '5(A)'**, Certificate issued by the Gaonburha;
7. **Exhibit- '6'**, the photocopy of ration card;
8. **Exhibit- '7'**, the photocopy of Sale deed dated 22.04.1974;
9. **Exhibit- '8'**, the photocopy of Revenue Receipt; and
10. **Exhibit- '9'**, the Affidavit.

5. We have given due consideration to the arguments advanced by the learned counsel of both sides and perused records.

6. The Tribunal, by the impugned opinion, recorded the following reasons while holding the petitioner as a foreigner of post 25.03.1971 stream-

*"From the record it appears that OP has projected one Abdul Khalek as her father whose name appeared in the voter list of 1970 at village Sunbari under 47 No. Sarbhog LAC*

*but surprisingly at the time of deposition she has named her father as Abdul Khalek Ahand. She produced one witness as her father (DW-2) who has described his name as Abdul Khalek Akand. Again she has produced one Hanif Ali as her brother who was examined as DW-3 but in the written statement there was not a single whisper about her brothers and sisters. Such sudden appearance of brother or any other relatives of a proceedee is always doubtful. Let us now examine whether OP could prove the above facts in issue by adducing cogent, reliable and admissible evidence. First of all let us examine the oral evidence of OP, DW-2 and DW- 3. In the query put by the Tribunal, the OP has stated that her father has one brother namely Suraj Jaman which is controverted by DW- 2 in his cross by saying that his father had two brothers namely Suraj Jamal and Nasib Ali. The OP has stated in her evidence-in-chief that her father owns a plot of land at village Sunbari measuring 2 Katha 10 Lecha and according to DW- 2 his father had purchased a plot of land at village Sunbari measuring 3 Bigha from their paternal uncle namely Nasib Ali. The said sale deed was exhibited here as Ext- 7 and as per the schedule of the said sale deed, the area of the land was 1 Bigha 2 Katha 10 Lecha and it was registered on 22.04.1974 before the authority which means the purchaser of the deed namely Abdul Khalek Akand had purchased the subject land 44 years ago. But DW- 2 who appears as Abdul Khalek Akand has stated that he purchased the said land 14 years ago. Ext- 4 (elector photo identity card) reveals that the father's name of OP is Khalek Akand which is contrary to the stand of OP as well as DW- 2. The DW- 3 could not produce any identity card or any voter list to establish that he is the son of OP's father or brother of OP. Most important aspect is that as per DW- 3 their mother is still alive but she has been absolutely vanished since 1970 which is quite surprising. Thus going by the evidence of DW- 2, it cannot be said that he is the genuine father of OP whose name appeared in the voter list of 1970 (Ext- 1) and so as DW- 3 and accordingly their testimony is totally unreliable.*

*As far as documentary evidence are concerned, in Ext- 1 the father's name of OP was Abdul Khalek who was the son of Afad Ali and one brother of said Abdul Khalek namely Nasir Ali was also recorded along with him but as per OP her only paternal uncle's name is Suraj Jaman. In Ext- 2 the father's name of OP had become Khalek Akand who is the son of one Rafat. Again in Ext- 3 the grandfather's name of OP appeared as P. Rafat. In Ext- 4 (elector photo identity card) as mentioned earlier the father's name of OP is shown as Khalek Akand showing his relation name as Rafat. In terms of the age as reflected in Ext- 4, the present age of DW- 2 should have been 72 years but at the time of deposition he has described his age as 75 years probably to match up his age with Ext- 1. Discrepancy of name here and there is*

*considerable but such kind of consistent discrepancies is not acceptable. Ext- 5 is a residency certificate issued by a Gaonburha namely Rahmat Ali of different village called Kuthurijhar who has certified that OP is the daughter of Khalek Akand who was a resident of village Sunbari who got married to Abdul Jalil of village Gobardhana and this certificate was issued on 15.10.2016. But in the record there is another original residency certificate which was issued by the same Gaonburha on 28.07.2017. This time he has certified that OP is the daughter of Abdul Khalek Akand and the other contents of the certificate were same. The question of how a Gaonburha can issue two different certificates mentioning two different names of father of same person. More so, he cannot issue any certificate in favour of a person who resides beyond his jurisdiction. This is how the Gaonburhas are not only trying to protect those suspected citizens by issuing fake certificates just for some extraneous consideration but harboring those illegal migrants whose citizenship has been questioned by the State itself. The said gentleman has refused to appear before this Tribunal to prove his certificates in accordance with law. These two certificates never helps OP as because as per written statement and evidence-in-chief her father is Abdul Khalek not Khalek Akand or Abdul Khalek Akand and she wanted to establish her lineage with Abdul Khalek. (The certificate dated 28.07.2017 is kept in the record and marked as Ext-5-A). A ration card (Ext- 6) is not a proof of citizenship. We have already discussed about Ext- 7 in the foregoing paragraph. Ext- 8 is a photocopy of revenue receipt wherein the names of some other person were reflected. Ext- 9 is a self serving affidavit explaining discrepancies of name and such affidavit is no evidence in the context of Section 1-3 of Evidence Act, 1872 and this position has been clarified by the Hon'ble Supreme Court in the case of **Sudha Devi Vs. MP Narayanan**, reported in **AIR 1988 SC 1381**. Ultimately it is found that there is absolutely nothing to establish her linkage with said Abdul Khalek."*

7. On scrutiny of the evidence, oral and documentary, produced by the petitioner and hearing the learned counsel of both sides thereon, we find as under-

8. **Ext. '1'**, the photocopy of certified copy of the voter list of 1970 of village Sunbari, P.S.- Sarbhog, Dist.- Kamrup, under No. 47 Sarbhog L.A.C., bears the names of the projected parents of the petitioner namely, Abdul Khaleque (father), aged about 32 years and Sabiran Nessa (mother), aged about 30 years. Perusal of **Ext. '2'**, the photocopy of the certified copy of the voter list of 1997 of the said village shows the name of the petitioner's projected father Khaleque Akand, aged about 60 years. In the subsequent two voter lists of 2005 and 2008,

we find the single name of Khaleque Akand, aged about 60 and 63 years respectively, as son of Rafat as resident of village Sunbari, under P.S.- Sarbhog/Barpeta Road. Explaining the discrepancies in the name of the projected father of the petitioner, it is stated in **Ext. '9'**, the affidavit sworn by the petitioner that they are the one and same person Abdul Khaleque. We find the discrepancies in the name of the petitioner's father appears to be doubtful as the same relates to his title and in the name of his father, which also appears to be without title, when compared to **Ext.- '4'**, the Elector Photo Identity Card of him, which was issued on 01.10.2013 as well as **Exts. '5'** and **Ext. '5 (A)'**, the two certificates issued on 15.10.2016 and 28.07.2017 respectively by the same Gaonburah, who was not examined in the proceeding.

9. The aforesaid discrepancies are vital, because, in the written statement, dated 27.10.2016, her father's name was mentioned as Abdul Khaleque and mother's name as Sabiran Nessa, who are residents of village Sunbari, under P.S.- Gobardhana of Dist.- Baksa (BTAD) instead of Sarbhog/Barpeta Road of Dist.- Barpeta. The name and address of her father has come in his evidence as D.W.- 1. However, her evidence is contradicted by the evidence of her projected father, who as D.W. 2 and D.W. 3, Hanif Ali, the projected younger brother of the petitioner described his name as Abdul Khaleque Akand instead of Abdul Khaleque. It is also not explained in the evidence, why the name of the petitioner's mother Sabiran Nessa was missing from the voter lists of 1997 and 2008 vide **Exts. '2'** and **'3'** respectively. The aforesaid discrepancies in the name of the projected father of the petitioner have remained vexed as the petitioner has kept the Gaonburah concerned, who issued the **Exts. '5'** and **Ext. '5 (A)'**, containing two contradictory names of the petitioner's father, out of the witness box. The contents of these two photocopies of documents remained disproved.

10. Again, **Ext. 4**, the photocopy of Elector Photo Identity Card of Khalek Akanda is described as of village Chunabari, P.S.- Gobardhana, in Dist.- Baksa (Assam) instead of village Sunbari under Sarbhog/Barpeta Road P.S. It is also not explained by some evidence as to how and when his address of residence had changed.

11. Proceeding to **Ext. '7'**, the photocopy of a registered sale deed, dated 22.04.1974, shows the name of Abdul Khaleque Akand, son of Rafat of village Sunbari, Dist.- Kamrup, but neither a certified copy thereof was produced nor the officials of the concerned Sub-

Registrar's office was examined. No revenue payment receipt in respect of the plot of land so purchased was exhibited in the proceeding to prove its possession by the petitioner's father following execution of the said purchase deed. Therefore, we find **Ext. 7** is disproved.

12. Turning to the **Ext. '6'**, the photocopy of a ration card, dated NIL, it is found that the said card was issued in the name of the petitioner and her 5(five) other family members of the matrimonial home, situated at village Gobardhana.

13. Thus, on careful consideration of the exhibited documents, discussed above, we find no proved link documents between the petitioner and her projected parents Khalek Ali @ Abdul Khaleque Akand (D.W. 2) @ Abdul Khalique @ Khaleque Akand (Father), Sabiran Nessa (Mother) and projected brother D.W.-3, Hanif Ali's relation to the petitioner and their parents.

14. Resultantly, we are of the opinion that the instant writ petition is devoid of any merit and accordingly stands dismissed.

The writ petition is disposed of.

**JUDGE**

**JUDGE**

**Comparing Assistant**