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BEFORE THE FOREIGNERS TRIBUNAL 9th, DHUBRI, ASSAM

Case No.FT-9/112/GKJ/2019

POLICE REFERENCE I(M)DT Case No.2389/98

State of Assam

-Vs-

JAKIRA BIBI

... Opposite Party

Present: *KIRTI KAMAL DAS*

Member,

Appearance:

For State of Assam : Sri Ananda Kumar Rai, Asstt. Govt. Pleader

For the O.P. : Sri Iskandar Azad, Advocate

Date of argument : 31.07.2025

Date of order : 01.11.2025

O R D E R

1. This reference is made against the Opposite Party (OP in short) namely **Jakira Bibi W/o Naseruddin Sk. of village- Shernagar, P.S.- Golakganj (now Agomani), in the district of Dhubri, Assam**, with the allegation that the above named OP has entered India illegally on or after 25.03.1971 from the specified territory i.e., Bangladesh.

2. Originally, this reference was forwarded by the Superintendent of Police (B), Dhubri vide SP (Border) I(M)DT Case No.2389/98 expressing doubt over the nationality of the OP and to decide as to whether the O.P. is or is not Illegal Migrant. Subsequently this reference was re-numbered before the Foreigners Tribunal No.2, Dhubri as F.T. Case No. 3494/GKJ/2011 under the provisions of the Foreigners Act, 1946 read with Foreigners (Tribunals) Order, 1964. Later, upon constitution of 64

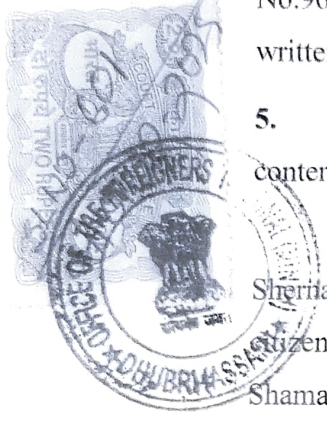
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nos. of additional Tribunals as per Order of the Hon'ble Supreme Court, the instant reference was received on transfer and taken up for disposal by this Tribunal.

3. Upon receipt of the reference from the Foreigners Tribunal No. 2, Dhubri, it was registered before this Tribunal as FT-9/112/GKJ/2019 and accordingly, notice was issued to the OP to appear and file written statement.

4. In response to the notice, on 11.08.2022, the OP appeared along with her Advocate and sought time for written statement by filing a petition bearing No.9630/2022 dated 11.08.2022. Subsequently, on 17.01.2023, the OP filed her written statement accompanied by verification with some photocopies of documents.

5. The O.P. in her Written Statement has denied the prosecution allegations contending *inter alia* that:



The O.P. is a citizen of India by birth; she was born on 12-07-1964 at village Shernagar, P.S.-Agomoni Dist.-Dhubri, Assam. O.P's father and grandfather is also citizen of India by birth and resident of same village. O.P's grandparent's name is Shamamud @ Samsun Sk. & Geno Bibi. O.P. claimed her father got four brothers & sisters namely Motiulla Sk, Batasulla Sk @ Bata Ulla Sheikh @ Pora Sheikh (O.P's father), Nilmoti and Fulmoti. The OP claimed her parents name is Batasulla Sk. & Jelmoti Bibi, both are deceased. O.P's are six brothers and sisters namely Osiran Bewa, Kosiran Bewa, Khasiran @ Ketu Bewa, Jakira Bibi @ Jahira Bibi (O.P), Zasimuddin Sk and Jahir Ali. After death of O.P's father, her mother got married for second time to one Gaher Ali S/o- Sepat of vill- Shernagar whereas O.P got married to one Naser Uddin Sk @ Kanu Sk, S/o- Lt. Bosor Uddin Sheikh of vill- Shernagar, P.S.- Agomoni, Dist.- Dhubri, Assam and out of their wed-lock 6 children were born namely- Rehena Khatun, Joynal Abedin, Roshida Khatun, Aynal Hussain, Mannan Sheikh and Mofida Khatun. O.P's parents and brother Zasimuddin Sk has been enlisted in the N.R.C, 1951 in village Shernagar, P.S.- Golakganj, Sub-Division: Dhubri, Dist.- Goalpara (Assam) and their Legacy Data Code: 340-0017-6999.

The O.P. claimed her parents name recorded in the voter list of 1958 at vill- Shernagar, Sub-Division- Dhubri under 35, Golakganj LAC and name of her mother along with step-father recorded in the voter list of 1966 of vill-Shernagar, under 35 Golakganj LAC. Again the name of O.P's mother recorded in the voter list

of 1985 of vill-Shernagar, under 25 Golakganj LAC. The O.P. claimed that her name along with her husband recorded in the voter list of 1994, 1997, 2005, 2015 & 2022 under 25-Golakganj LAC of vill- Barmera and Shernagar respectively. Subsequently their sons, daughter-in-laws and daughters name accompanied with the voter list.

The O.P. stated she along with her brothers & others jointly owned land measuring 3B-OK-10.5 Lecha covered by Dag No. 185, 184, 190, 197/845, 197/844, Khatian No.-18 of vill- Shernagar under Dhubri district, Assam which they sold out to one Jahangir Hussain & Khorshed Azom S/o- Md. Dhanir Uddin Sarkar vide regd. sale deed No.456 of 1983.

With the above pleadings, the OP claimed as Indian national and prayed for dismissal of the reference.

As per Section 9 of the Foreigners Act, 1946, the burden is on the Proceedee to prove her nationality. Hence, the liability of the Prosecution is dispensed with.

The OP namely Jakira@ Jahira Bibi has examined herself as DW-1 and exhibited as many as 16 numbers of documents to establish herself as Indian national. The OP further adduces evidence of one Jahir Ali as DW-2 to substantiate her claim. The documents adduced by the DW-1 marked as Exhibit- A to P are as follows:

- (i) Exhibit-A is copy of e-certified voter list 1958 of Shernagar in Batasullah Sk & Jelmoti Bibi's name.
- (ii) Exhibit-B is copy of e-certified voter list 1985 of Shernagar in Jahira Bibi's name.
- (iii) Exhibit-C is copy of e-certified voter list 1994 of Barmera in Naseruddin Sk & Jahira Bibi's name.
- (iv) Exhibit-D is copy of e-certified voter list 1997 of Shernagar in Naseruddin Sk & Jakira Bibi's name.
- (v) Exhibit-E is copy of e-certified voter list 2005 of Shernagar in Naseruddin Sk, Jahira Bibi & Joynal Abedin's name.

- (vi) Exhibit-F is copy of e-certified voter list 2015 of Shernagar in Naseruddin Sk, Jahira Bibi, Joyanal Abedin, Anowara Begum, Aynal Hossain & Mannan Sk's name.
- (vii) Exhibit-G is copy of e-certified voter list 2022 of Shernagar in Naseruddin Sk, Jahira Bibi, Joyanal Abedin, Anowara Begum, Aynal Hossain, Mannan Sk, Amisa Khatun & Fatema Khatun's name.
- (viii) Exhibit-H is copy of certified regd. Deed No.456 dated 20.01.1983.
- (ix) Exhibit-I is copy of EPIC of Jahira Bibi w/o Necher Uddin Sheikh.
- (x) Exhibit-J is copy of PAN of Jahira Bibi d/o Bataulla Sheikh.
- (xi) Exhibit-K is copy of Certificate dated 27.07.2015 issued by Shernagar GP.
- (xii) Exhibit-L is copy of Aadhaar of Jahira Bibi.
- (xiii) Exhibit-M is copy of EPIC of Jahir Ali.
- (xiv) Exhibit-N is copy of Aadhaar of Jahir Ali.
- (xv) Exhibit-O is copy of PAN of Jahir Ali.
- (xvi) Exhibit-P is copy of e-certified voter list 1966 of Shernagar in Gaher Ali, Mahijan Bibi & Jilo Bibi's name.

8. The only issue for determination in the instant reference is whether the OP is a "citizen of India" or a "Foreigner" within the meaning of expression as defined U/s 2 (a) of the Foreigners Act, 1946.

DISCUSSION AND FINDING

9. Heard the parties and perused the Written Statements, Evidence on Affidavit filed by the OP along with the depositions as well as the Exhibits adduced by the OP as DW-1, placed in support of her claim. On careful scrutiny of records as well as deposition, it is transpired that the Proceedee's father namely Bataullah Sheikh and mother Jelmoti Bibi @ Jilo Bibi had cast vote together in assembly elections of the State of Assam from village Shernagar and as such their names appeared in voter list 1958 (Exhibit-A) and further it is pleaded that after death of OP's father in the year 197

1963, her mother got remarried to one Goher Ali of same village and she started casting votes along with Goher Ali since the year 1966 (Exhibit-P). It is noticed that OP along with her brothers & sisters had sold out a plot of land inherited from ancestors by executing a Sale Deed No.456 dated 20.01.1983 (Exhibit-H). The Proceedee also categorically discloses during her deposition on oath the material facts such as names of parents and grandfather as well as facts of selling out a plot of land by her. Thus I am inclined to hold Exhibit-A, H & P having probative value in the eye of law. The DW-2 (Jahir Ali) during cross-examination duly corroborated statement made by the Proceedee as DW-1 and deposed that his father Bataullah Sheikh had cast votes along with mother Jheltoti Bibi since deceased in the year 1958 and since the year 1966 his mother cast votes along with their step-father Gaher Ali. Thus the depositions of both DWs adequately substantiated the exhibited electoral rolls of the year 1958 & 1966 (Exhibit-A & P). The Proceedee contended in written statement and deposed during cross-examination that she is a regular voter of her matrimonial village Shernagar and she has been exercising voting right along with her husband Naseruddin Sheikh and to that effect, the Proceedee brought on record the Electoral Roll of 1985, 1994, 1997, 2005, 2015 & 2022, where names of Jahira Bibi @ Jakira Bibi and Naseruddin Sheikh are seen enlisted, which facts remained unchallenged by the Government side. Thus this Tribunal finds nothing adverse in the exhibited electoral rolls which demonstrate that Proceedee's parents had been regular voters of village Shernagar under Dhubri district of Assam and OP/Proceedee being a descendant of genuine Indian parents is also casting votes regularly in her matrimonial village. That apart, the report dated 26.06.2025 furnished by the Election Office, Dhubri reaffirm authenticity of the exhibited voter lists.

In order to establish paternal linkage with Bataullah Sheikh, the Proceedee has adduced oral evidence of Jahir Ali as DW-2 to establish and prove linkage with her father and his stay in India. From the oral evidence, the parental linkage with Bataullah Sheikh is found to be established in an adequate manner, since Proceedee's own elder brother himself appears this Tribunal and adduced evidence as DW-2 and who have categorically corroborated the deposition of the DW-1. The evidence of DW-2 remains unrebutted since the learned AGP could bring nothing adverse to it.

Hence, oral evidences are held as reliable since there is nothing to disbelieve Bataullah Sheikh as father of the OP/Proceedee.

The Proceedee further exhibited Exhibit-K for establishing linkage with Bataullah Sheikh in this case and the content of the Exhibit-K is not adequately verified through evidence of DW-3 as required. The Elector Photo Identity Card, PAN and Aadhaar Card of Proceedee are post 1971 documents but are found relevant to identify the Proceedee's father as well as her husband which substantiates that she is a regular voter. The learned AGP appearing for the State has also raised no objection to that effect.

Thus, in consideration of documents and oral testimony, I am of the view that Bataullah Sheikh is the father of the Proceedee and his existence is traced in India since the year 1958. The Proceedee has produced oral testimonies of DW-2 to establish linkage with her father and his stay in India. The oral testimonies and documents produced in defence have not been rebutted or disputed by the learned AGP appearing for the State. Thus, in consideration of entirety of documents produced, it appears that the Proceedee's father had not illegally entered into the territory of India or the State of Assam, as suspected, but he was an original inhabitant of State of Assam.

The documents have been found to be reliable, trustworthy and acceptable being in order and having been issued by the proper authorities and proved. The documents have got evidentiary value. The Proceedee from all possible aspects of the matter cannot be termed or declared to be a foreigner of the stream Post 1971 or any other stream under the law. The Proceedee has been able to discharge the burden cast on her under Section 9 of the Foreigners Act, 1946 to prove the fact that she is not a foreigner under the law.

10. In view of above, it is observed that the Proceedee namely Jakira Bibi @ Jahira Bibi has been able to establish her parental lineage with Bataullah Sheikh by adducing cogent and admissible evidences and her claim of Indian national also been established accordingly.

O P I N I O N

In view of the above findings and discussion, this Tribunal is of the opinion that the Proceedee namely **Jakira Bibi W/o Naseruddin Sk. of village- Shernagar, P.S.- Golakganj (now Agomani), in the district of Dhubri, Assam**, referred in the instant reference is not a foreigner/illegal migrant of any stream. Hence, this reference is answered in negative.

Send a copy of this order to the Sr. Superintendent of Police (B), Dhubri, the District Commissioner, Dhubri and the Election Officer, Dhubri for information and necessary action.

Judgment and order passed by

Sd/-

(KIRTI KAMAL DAS)

Member,

Foreigners Tribunal-9th
Dhubri, (Assam).

