

**(2014) 02 GAU CK 0012**

**Gauhati High Court**

**Case No:** Writ Petition (C) No. 3628/2013

Mustt. Kulsum Begum @ Bibi,  
Md. Izazur Ali, Miss Rehena  
Begum and Miss Rashida Begum

APPELLANT

Vs

The Union of India, The State of  
Assam, The Superintendent of  
Police (B) and The  
Officer-in-charge, Mikirbheta P.S.

RESPONDENT

**Date of Decision:** Feb. 12, 2014

**Acts Referred:**

- Citizenship Act, 1955 - Section 3
- Foreigners Act, 1946 - Section 2(a)

**Hon'ble Judges:** Hrishikesh Roy, J

**Bench:** Single Bench

**Advocate:** B. Banerjee, Mr. D.F.A. Ahmed, Mr. S.C. Biswas, Mr. B. Choudhury and Mr. E. Ahmed, Advocate for the Appellant; M. Bhagabati, Central Govt. counsel and Mr. J. Handique, Learned Govt. Advocate, Advocate for the Respondent

**Final Decision:** Disposed Off

### **Judgement**

Hrishikesh Roy, J.

Heard Mr. B. Banerjee, learned counsel appearing for the petitioners. The respondents are represented by Mr. M. Bhagabati, learned Central Govt. counsel and Mr. J. Handique, learned Govt. Advocate.

2. The petitioner No. 1 is the wife of Late Jahed Ali and the other 3 petitioners are their minor children. They challenge the order dated 22.5.2013 (Annexure-1) in case No. F.T.(C) 86/2009, whereby the Foreigners Tribunal (2nd), Morigaon has declared that the petitioner No. 1 has illegally entered into from Bangladesh after 25.3.1971 and therefore she and her children are foreigners u/s 2(a) of the Foreigners Act, 1946. The conclusion was reached on the ground that the petitioner failed to

discharge their legal burden to prove that they are Indian citizens.

3. Mr. B. Banerjee, learned counsel submits that the petitioner No. 1 is the daughter of Habed Ali, who was an Indian citizen and therefore as a person born to an Indian citizen, the petitioner No. 1 and consequently her children, are entitled to claim themselves as Indian citizen u/s 3 of the Citizenship Act, 1955 (as amended).

4. Referring to the 1966 voters list (Ext. "Ga"), where the name of the petitioner's father Habed Ali is included as a voter in the No. 83 Bokani Legislative Assembly Constituency (L.A.C.) of Nagaon District, Mr. Banerjee submits that this voters list establish that the father of the petitioner No. 1 was a citizen of India.

5. The petitioner also refers to a 2nd 1966 voters list (Ext. "Gha") to show that the parents-in-law of the petitioner No. 1 A Samed and Jamila Khatun were also registered voters in the 1966 Electoral Roll of the Bokani L.A.C. and it is argued by the petitioner that non-consideration of these two supporting documents by the learned Tribunal was unjustified.

6. For the respondents Mr. M Bhagabati refers to the impugned judgment dated 22.5.2013 to project that Ext. "Ga" & Ext. "Gha" voter lists were disbelieved by the Tribunal on the ground that the certified copy was handed over to the applicant on 6.9.2002, whereas the said certified copy was compared as per the signature of the Comparing Assistant, only on 7.9.2002.

7. This Court in State of Assam and Others Vs. Moslem Mondal and Others, has held that voters list is a relevant piece of evidence in the inquiry on citizenship of a person and entries in the voters list are admissible evidence. But in the instant case, the learned Tribunal disbelieved the two exhibited voters list on the ground that the date of handing over the copy to the applicant and the date of comparison of the Electoral Roll do not tally. But the authenticity of the certified copy of the two voters list is not otherwise doubted by the learned Tribunal.

8. It may be noted that the proceeding was started not only against the petitioner No. 1 and her children, but also against Late Jahed Ali, who is the husband of the petitioner No. 1. That is why the two 1966 Voters Lists of their respective parents were exhibited before the Tribunal. A bonafide mistake in putting the date in the certified copy by the Comparing Assistant in the office of the Election Officer, Nagaon may have led to non-consideration of Ext. "Ga" & Ext. "Gha". Therefore subject to the petitioners' producing fresh certified copies of the entries in the 1966 Voters Lists for Habed Ali (in Ext. "Ga") and for A. Samed and Jamila Khatun (in Ext. "Gha"), the Foreigners Tribunal is directed to reconsider the petitioner's status on the basis of the entries in Ext. "Ga" & Ext. "Gha". For the denovo consideration, the case is remanded back to the Foreigners Tribunal. The impugned judgment dated 22.5.2013 (Annexure-1) in case No. F.T.(C) 86/2009 will abide by the fresh decision of the Tribunal. It is ordered accordingly.

9. The Registry should for with return back the LCR alongwith a copy of this order. With this direction, the case stands disposed of without any order of cost.