

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

**W.P.(C) No. 3773 of 2016**

Sahera Khatun @ Chahera Khatun,  
D/o Late Jonab Ali Sheikh  
W/o Lt. Subahab Ali@ Subahan Sheikh,  
R/o Vill – Krishnapur Pahartoli,  
P.S. – Jogighopa,  
District- Bongaigaon, (Assam).

*....Petitioner*

*-Versus-*

1. Union of India,  
Through --  
the Ministry of Home Affairs,  
Griha Mantralaya,  
New Delhi.
2. State of Assam,  
Through --  
The Secretary to  
the Govt. of Assam,  
Home Department, Dispur,  
Guwahati -6.
3. Deputy Commissioner, Bongaigaon,  
P.O. – Bongaigaon,  
District -Bongaigaon, Assam.
4. Superintendent of Police (Border),  
P.O. & Dist – Bongaigaon, Assam.

*....Respondents*

**B E F O R E**  
**THE HON'BLE MR. JUSTICE UJJAL BHUYAN**  
**THE HON'BLE MR. JUSTICE PARAN KUMAR PHUKAN**

For the petitioner	: Mr. R. Majumdar, Adv, Mr. S. Das, Adv.
For respondent No. 1	: Mr. P. Baruah, CGC
For respondent Nos. 2 to 4	: Mr. G. Pegu, GA, Assam
Date of hearing	: <b>08.03.2017</b>
Date of Judgment	: <b>20.03.2017</b>

**JUDGMENT AND ORDER (ORAL)**

*(Ujjal Bhuyan, J)*

This case was heard on 08.03.2017 and today is fixed for delivery of order. Accordingly, order is dictated in the open Court.

2. We have heard Mr. R. Mazumdar, learned counsel for the petitioner, Mr. P. Baruah, the learned counsel for the Central Government and Mr. G. Pegu, learned Government Advocate, Assam.

3. This petition has been filed under Article 226 of the Constitution of India challenging the legality and validity of the order dated 09.06.2016 passed by the Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri in BNGN/FT/Case No. 1689/2008 declaring the petitioner to be a foreigner who had illegally entered into India (Assam) after 25.03.1971.

4. From the documents placed on record it is seen that initially a reference was made by the Superintendent of Police (B), Bongaigaon under the Illegal Migrants (Determination by Tribunals) Act, 1983 with the allegation that the petitioner was an illegal migrant as defined under the said Act. After the said Act was declared unconstitutional by the Supreme Court in ***Sarbananda Sonowal Vs. Union of India, (2005) 5 SCC 665***, the reference was re-registered under the provisions of the Foreigners Act, 1946 read with the Foreigners (Tribunal) Order, 1964 before the Foreigners Tribunal, Bongaigaon No. 2, Abhayapuri (Tribunal) as BNGN/FT/Case No. 1689/2008.

5. Notice issued by the Tribunal was served upon the petitioner whereafter she had entered appearance and filed her written statement along with copies of certain documents. Thereafter, petitioner adduced evidence, both oral and documentary. After hearing the matter and considering the materials on record, Tribunal passed the order dated 09.06.2016 declaring the petitioner to be a foreigner who had illegally entered into India (Assam) after 25.03.1971.

6. Following the above order dated 09.06.2016 petitioner was taken into custody and is presently lodged in detention camp.

7. This Court vide order dated 23.06.2016 had issued notice and passed an interim order to the effect that until further orders petitioner should not be deported from India.

8. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record, including the LCR.

9. In this proceeding we are concerned with the legality and validity of the order passed by the learned Tribunal dated 09.06.2016. Relevant portion of the aforesaid order is extracted hereunder :-

*"Decision & reasons thereof : In this case no prosecution witness has been examined. But to prove herself not to be a foreigner, O.P. has submitted her evidence on affidavit. OP has also examined Ahmed Ali, son of Jonab Ali as her defence witness as D.W. 2.*

*In her evidence on affidavit, OP stated that her father's name appears in the voter list of 1966 (Ext.1), voter list of 1970 (Ext. 2) and voter list of 1985 (Ext. 3). OP further stated that after her marriage her name appears in the voter list of 1977 (Ext. 4). Thereafter, her name appears in the voter list of 2008 (Ext. 5) and voter list of 2010 (Ext. 6). OP has submitted a certificate issued by Secretary, Sadhubhasa Gaon Panchayat as link certificate.*

*OP has examined Ahmed Ali as D.W. 2. In examination-in-chief D.W. 2 has stated that OP, namely, Sehera Khatun is his elder sister. D.W. 2 stated that his brothers names are Taizuddin and Babur Ali. D.W. 2 further deposed that at the time of marriage of OP he was 10 years old. OP's husband's name is Sobahan Ali.*

*As no Assistant Govt. Pleader has been appointed here, the Member FT has put some questions to D.W. 2 which has been recorded. D.W. 2 stated that Sohrab Ali, whose name appeared in the voter list of 1970 (Ext. 2) along with his father is not his brother, and further D.W. 2 has not disclosed the identity of Sohrab Ali. The D.W. 2 could not answer properly the family tree of the father of OP. Hence, his evidence cannot be treated as genuine and believable.*

*To come to a just conclusion, let me appreciate the evidence on record along with the aforementioned seven exhibits (Exhibits 1, 2, 3, 4, 5, 6 and 7) to determine the nationality of OP namely Sehera Khatun Bewa.*

*From the record it appears that OP has projected Jonab Ali Sheikh as his father whose name appears in Ext. 1, Ext. 2, Ext. 3. The Ext. 4, Ext. 5 and Ext. 6 is the voter list wherein OP's name appeared after her marriage. Ext. 7 is the certificate issued by the Secretary, Sadhubhasa Gaon Panchayat. Though OP has*

*submitted Ext. 7 as link certificate, she has not proved the same by examining the issuing authority before this Tribunal. Hence, Ext. 7 cannot be treated as genuine and admissible. On the other hand, evidence of D.W. 2 is also not believable.*

*For the reasons and discussions above, the evidence and documents submitted by OP in support of his (sic) version are found to be not sufficient and trustworthy to prove that she is an Indian by birth.*

*Considering the entire material on record and discussion above, I am of the considered opinion that the evidence of the opposite party is not trustworthy at all and opposite party has miserably failed to discharge her burden to prove that she was born through genuine Indian parents as such acquired citizenship by birth, rather it appears that opposite party namely, Sahera Khatun Bewa, wife of Lt. Subahan Ali, village – Islampur, Pahartoli, P.S. Jogighopa, district- Bongaigaon, Assam has entered into India from Bangladesh without authority subsequent to 25.03.1971 and hence, opposite party is termed to be foreigner/illegal migrant of post 25.03.1971. This case is decided accordingly.*

*Intimate the Deputy Commissioner, Bongaigaon and the Superintendent of Police (B), Bongaigaon along with copy of this order accordingly. Deputy Commissioner is to take necessary steps to delete the name of the OP from the Electoral Roll."*

10. In ***State Vs. Moslem Mondal, (2013) 1 GLT 809*** a Full Bench of this Court had considered, amongst others, the aspect relating to interference by the Writ Court with an order passed by a Foreigners Tribunal. It was held that though the Writ Court certainly has the jurisdiction to interfere with an order passed by the Foreigners Tribunal, the width of such jurisdiction would be limited, certiorari jurisdiction being supervisory and not appellate. It was held that unless the order of the Tribunal suffers from fundamental flaws, such as, the order is based on no evidence or on inadmissible evidence or in a case where admissible evidence was not taken into consideration the Writ Court would have the jurisdiction to interfere with such an order of the Tribunal as it would be a case of error apparent on the face of the record. The other errors of fact, howsoever, grave those may be, would not be corrected by the Writ Court having regard to the fact that the finding recorded by the Tribunal is a finding of fact.

11. Notwithstanding the above legal position, we have considered and examined the evidence on record to see for ourselves whether the finding recorded by the Tribunal conforms to the legal parameters.

12. In the written statement petitioner had stated that she was born at village Piazbari Part I, Bilasipara in the district of Dhubri and her father's name was Jonab Ali, son of Lt. Gulabdi Sk. Her father's name appeared in the voters lists of 1966, 1970 and 1985. On the other hand, the petitioner's name appeared in the voter's lists of 1997, 2008 and 2010. She has also stated that her mother's name Bachatan Bibi was included in the voters list of 1966. According to her, on attaining the age of majority she married one Shobhan Ali @ Shobhan Sheikh, son of Asan Sheikh of village Islampur under Police Station, Joghhighopa in the district of Bongagaion, whereafter, she resided in her matrimonial home. She also stated that Secretary of Sadhubhasa Gaon Panchayat of Dhubri district had issued a certificate on 16.03.2016 certifying the relationship between petitioner and Jonab Ali Shiekh as father and daughter. Another certificate was issued by the Secretary certifying her residentship with the said Gaon Panchayat area.

13. On a careful analysis of the written statement it is seen that petitioner had not disclosed the year of her birth, not to speak of the date or month of birth. Additionally, there is no mention about her age in the verification column. She has not described her family tree as there is no mention about her brothers or sisters. Names of grandfather and grandmother, paternal and maternal, had not been mentioned. Though she stated that she had married one Shobhan Ali @ Shobhan Sheikh on attaining the age of majority, the year of marriage has not been mentioned, not to speak of date or month. She has also not stated anything regarding her children. These are material facts within the knowledge of the petitioner, yet, she did not deem it appropriate to disclose those material facts in her written statement. In her evidence-in-chief, petitioner repeated the same thing except that this time, she mentioned her age as 67 years and that she had married Shobhan Ali @ Shobhan Sheikh in the year 1970. This evidence-in-chief by way of affidavit was sworn on 08.02.2016. If the petitioner was 67 years of age on the date of swearing of the affidavit it would mean that she was born in the year 1949. If that be so, she had attained the age of franchise in the year 1970 but her name appeared in the voters list for the first time in 1997 (Ext. 4).

14. One Sri Ahmed Ali Sheikh deposed as D.W. 2. He had deposed before the Tribunal on 16.03.2016 disclosing his age as 60 years. According to him, petitioner was his elder sister and she got married when he was 10 years of age. If D.W. 2 was 60 years of age in 2016 it would mean that he was born in 1956. As per his version, petitioner got married when he was 10 years old. This would mean that petitioner got married in the year 1966 when DW 2 was 10 years old.

15. Adverting to the documents exhibited by the petitioner it is seen that Ext. 1 was an extract of the voters list of 1966 in respect of Gouripur Constituency. Here the names of two persons appeared, namely, Jonab Ali Sheikh and Bachatan Bibi. They were shown as being aged about 48 and 38 years respectively. Ext. 2 is an extract of the voters list of 1970 in respect of the same Gouripur Constituency. Here in addition to Jonab Ali Sheikh and Bachatan Bibi, name of one Sohrab Ali, son of Jonab Ali appears. Here age of Jonab Ali Sheikh and Bachatan Bibi were shown as 52 and 42 years respectively and that of Sohrab Ali as 30 years. Interestingly name of the petitioner does not appear in the said voters list. As discussed above, if she was born in 1949 certainly she had attained the age (21 years) to cast her franchise in 1970, but, conspicuously her name was missing from the voters list.

16. In the next exhibit i.e., Ext. 3, which is an extract of the voters list of 1985 in respect of 26-Bilasipara (West) Legislative Assembly Constituency, names of Jonab Ali Shiekh and Bachatan Bibi appeared with their respective ages as 62 years and 55 years respectively. In addition, names of two other persons, namely, Ahmed Ali, son of Jonab Ali Sheikh, and Mazful Bibi wife of Ahmed Ali were shown with their respective ages as 35 and 28 years. In this exhibit name of Sohrab Ali is missing. There is no explanation as to what had happened to Sohrab Ali and why his name did not figure in this exhibit. In addition to the discrepancies in the ages of Jonab Ali Shiekh and Bachatan Bibi appearing in Exts. 2 and 3 above, there is further discrepancy with regard to the constituency. Ext 2 was in respect of Gouripur Constituency, whereas, Ext. 3 was in respect of Bilasipara Constituency. How, when and in what manner Jonab Ali Shiekh and his family shifted from Gouripur Constituency to Bilasipara Constituency has not been explained. In this exhibit i.e., Ext. 3 Ahmed Ali described himself as aged about 35 years. If in 1985 his age was 35 years it would mean that he was born in 1950. In his evidence he had stated that petitioner, his elder sister, had

married when he was 10 years of age. If that be so, petitioner had married in the year 1960 when he was 10 years old and when petitioner was 11 years of age, which again contradicts the oral testimony of DW 2.

17. Ext. 4 is an extract of the voters list of 1997 in respect of 35-Abhayapuri (South) Legislative Assembly Constituency. Here names of Sobahan Ali, husband of the petitioner, petitioner herself, and one Fulbar Ali appeared as voters. In this exhibit petitioner is shown as 39 years of age and Fulbar Ali is shown as 34 years of age. Petitioner has not stated whether she was the first wife or the second wife of Sobahan Ali, whereas, this exhibit shows Fulbar Ali, aged about 34 years, as son of Sobahan Ali. If Fulbar Ali is the son of Sahera Khatun, i.e., the petitioner, then she was 5 years of age when Fulbar Ali was born, which is a biological impossibility. In Ext. 5, i.e. extract of voters list of 2008 in respect of 35-Abhayapuri (South) Legislative Assembly Constituency, name of Sobahan Ali is missing though petitioner's name appears therein along with other names, such as, Fulbar Ali. Similar is the position in respect of Ext. 6.

18. Till this point of time there is no relevant document to show that petitioner is the daughter of Jonab Ali Sheikh. As noticed above, if the petitioner was born in the year 1949 her name ought to have appeared in the voters list from 1970 onwards. Surprisingly, her name appeared for the first time in 1997 along with one Sobahan Ali, her husband. It is to bridge the relationship between petitioner on one hand and Jonab Ali Shiekh on the other hand that Ext. 7 was tendered before the Tribunal. This is a certificate dated 02.07.2015 issued by the Secretary of Sadhubasha Gaon Panchayat in the district of Dhubri certifying that petitioner was a resident within the said Gaon Panchayat area and was the daughter of Jonab Ali Sheikh. It further certified that petitioner got married to one Sobahan Shiekh, son of Asan Sheikh, of Islampur village. The Secretary mentioned that the said certificate was issued on the basis of the evidence placed before him. Tribunal did not accept this certificate on the ground that the author of the said certificate did not depose before the Tribunal testifying the truthfulness of the contents. View taken by the Tribunal is correct, inasmuch as, in a recent decision of this Court in the case of *Monowara Bewa @ Manora Bewa*, [W.P.(C) No. 2634 of 2016] decided on 28.02.2017, this Court has held that such a certificate issued by the Secretary of Gaon Panchayat has got no statutory sanction, rather such a certificate would be contrary to the mandate of

*Assam Panchayat Act, 1994 and Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003*, besides, being opposed to national interest. This Court has held that at the most such a certificate would be a private document in which event the author of the document would have to come forward to testify before the Tribunal about the truthfulness of the contents of the certificate issued by him, more so, because he had stated in the certificate that it was issued on the basis of evidence produced before him. In this case, Gaon Panchayat Secretary did not appear before the Tribunal and did not testify about the truthfulness of the contents. That apart, the fact that this certificate was issued as late as on 02.07.2015 on the verge of conclusion of the proceeding before the Tribunal also raises serious question marks about the bona fides of such a certificate. Therefore, such a certificate cannot be taken into consideration and was rightly rejected by the Tribunal.

19. If Ext. 7 is removed from the scene, there is no evidence, cogent or otherwise, to link petitioner with Jonab Ali Sheikh. There is no linkage document to show that petitioner is the daughter of Jonab Ali Sheikh. Thus there is no material to show presence of the petitioner or her parents on Indian soil prior to 25.03.1971. In such circumstances, it cannot be said that petitioner had discharged her burden under Section 9 of the Foreigners Act, 1946. That being the position, we find no error and infirmity in the view taken by the Tribunal.

20. Writ Petition is devoid of merit and is accordingly dismissed. Interim order passed on 23.06.2016 stands vacated.

21. Registry to send down the LCR and inform the concerned Foreigners Tribunal, Deputy Commissioner and Superintendent of Police (B) for necessary follow-up steps.

**JUDGE**

**JUDGE**