

GAHC010083152020



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

Case No. : Review.Pet./65/2020

AHILA KHATUN @ RAHILA KHATUN
D/O LATE SANODDI DEWANI @ SONAUDDIN SHEIKH, W/O KOFILUDDIN
SHIEKH, R/O VILL. BARBALUPARA (BORKANDA), P.S. MATIA, DIST.
GOALPARA, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS
THROUGH THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI 110001

2:THE STATE OF ASSAM
THROUGH THE SECY.
GOVT. OF ASSAM
POLITICAL (B)
GHY-6

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-6

4:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
P.O. AND DIST- GOALPARA
PIN- 783101

5:THE DY. COMMISSIONER
GOALPARA
ASSAM
PIN- 783101

6:THE ELECTION COMMISSION OF INDIA
THROUGH THE ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

7:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-

Advocate for the Petitioner : MR H R A CHOUDHURY, MR F U BARBHUIYA, MS S DAS

Advocate for the Respondent : ASSTT.S.G.I., SC, ELECTION COMMISSION.,SC, NRC,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 16.06.2026
(K.R Surana, J)

Heard Mr. FU Barbhuiya, learned counsel for the petitioner. Also heard Mr. B. Chakravorty, learned CGC; Mr. A.I. Ali, learned standing counsel for the ECI; Mr. J. Payeng, learned standing counsel for the FT matters and NRC; and Ms. R.B. Bora, learned Junior Govt. Advocate for respondents.

2. By filing this review petition, the petitioner has assailed the order dated 09.11.2018, passed by the Coordinate Bench of this Court in W.P.(C) No. 6052/2018.

3. The said writ petition was filed to assail the opinion dated 24.07.2018 passed by the learned Member, Foreigners' Tribunal, No-5th, Goalpara, in F.T. Case No. F.T./5/65/MA/2017, arising out of I.M.D.T. Reference Case No. 1042/00. By the said opinion, the learned Foreigners' Tribunal had rejected the

defence plea of the petitioner that she is the daughter of Sonoddi Sk. and on the premises of the police enquiry, where the name of her father was projected as late Ekram Ali, the learned Tribunal had held that the petitioner Rahila Khatun, daughter of late Ekram Ali, wife of Kafiluddin of village Barkanda under P.S. Matia, in the district of Goalpara is a foreigner of post 1971 stream, having entered into Assam on or after 25.03.1971. This Court on appreciation of the pleadings and evidence which was available on record, by the order under review dated 09.11.2018 disbelieved the plea of the petitioner that she is the daughter of late Ekram Ali as well as the plea taken in the written statement that her name is recorded as Rahila Khatun, daughter of late Ekram Ali instead of Ahila, daughter of Sonauddin Dewani in the proceedings and on the ground that the petitioner had failed to establish that she is not Rahila Khatun, daughter of late Ekram Ali and instead she is Ahila Khatun, daughter of Sanoddi Dewani, no error apparent was found on the face of the opinion and accordingly the writ petition was dismissed.

4. The petitioner was subjected to another proceeding before the learned Foreigners' Tribunal No-5th, Goalpara, which was registered as F.T. Case No. F.T./5/954/MA/19, arising out of I.M.D.T. Reference Case No. 13/01 and in the said proceedings, the petitioner was referred to as Rohila Khatoon, daughter of late Monser Ali, wife of Kafil Uddin and by *ex-parte* opinion dated 09.08.2019, the said learned Tribunal taking into account the police report which was called for where the name of her father was revealed as Sunuddi Sk and not Monser Ali and accordingly, the petitioner was released in the case and the learned Tribunal directed the issuance of notice against Rohila Khatoon, daughter of late Monser Ali, wife of Kafil Uddin of village Barkanda i.e. the person against whom reference was originally made. Moreover, by holding that the notice was served,

the said proceedee Rohila Khatoon, daughter of late Monser Ali, wife of Kafil Uddin of village Barkanda, was declared to be a foreigner of the post 1971 stream.

5. The petitioner relying on the said *ex-parte* opinion dated 09.08.2019 passed by the learned Member, Foreigners' Tribunal No.-5th, Goalpara, in F.T. Case No. F.T./5/954/MA/19, arising out of I.M.D.T. Reference Case No. 13/01, now relies on the said police report, which vindicates her stand that Rohila Khatoon is the daughter of Sunuddi Sk.

6. Accordingly, the petitioner now claims that there was error in appreciating the opinion dated 24.07.2018, which was assailed in W.P.(C) No. 6052/2018, wherein this Court did not find any error in the opinion passed by the learned Tribunal by ignoring her defence that she is the daughter of Sonauddin Dewani and did not find any fault with the said impugned opinion, but affirmed the same holding that the petitioner had failed to establish that she is not Rahila Khatun, daughter of late Ekram Ali.

7. The learned standing counsel for the FT matters and NRC has submitted that in the enquiry conducted by the Enquiry Officer, the Enquiry Officer had recorded only the submissions and disclosures that were made by the petitioner. In the enquiry done in the present case, she had disclosed the name of her father as Ekram Ali. Therefore, the proceeding was initiated against the petitioner by referring to her as the daughter of Ekram Ali. In the second case, she declared the name of her father as late Monser Ali and accordingly, the reference was made. It is submitted that it is the petitioner who had declared her father's name wrongly which was mentioned in the police enquiry report. Therefore there was no infirmity in the proceedings and accordingly, he has justified the opinion under challenge as well as the order dated 09.11.2018

passed in W.P.(C) No. 6052/2018.

8. Having perused the materials available on record, it is noticed that in the written statement, the petitioner had taken a consistent stand of her being the daughter of late Sonaddi Sheikh with spelling variations as the Sonoddi Sheikh and Sonoddin Sheikh and not the daughter of late Ekram Ali. Therefore, Exhibit -A, Exhibit -B, Exhibit - C, Exhibit - D, Exhibit -E, Exhibit – I, where reference was made to the petitioner being daughter of Sanoddi Dewani, Sonoddi Sk and Sonoddin Sk were discarded. The evidence of the petitioner was not appreciated by the learned Tribunal with a view that the petitioner would be the daughter of the Sonoddin Sk. This Court, in Paragraph Nos. 9 and 10 of the impugned order dated 09.11.2018, took a view which is extracted from:

"9. The plea of Mr. Saikia that the petitioner is not the daughter of Lt. Ekram Ali and the reason cited by the Tribunal in disbelieving the said fact that the petitioner ought to have sought for the police report in our considered opinion is proper. The same can be expressed in the other way that the petitioner failed to discharge her burden to show that she is not the daughter of Ekram Ali.

10. In the written statement the petitioner raised that the name of the petitioner has been recorded as 'Rahila Khatun' daughter of Lt. Ekram Ali instead of Ahila daughter of Sonauddin Dewani in the proceeding. Under such circumstances keeping in view the mandate of Section 9 of the Foreigners Act, 1946 we are of the considered opinion that the petitioner failed to establish that she is not Rahila Khatun daughter of Lt. Ekram Ali and instead she is Ahila Khatun daughter of Sonauddin Dewani and we do not find any error apparent on the face of the opinion requiring it to be interfered."

9. Having regard to the fact that the defence taken by the petitioner in the proceedings of F.T. Case No. F.T./5/65/MA/2017, arising out of I.M.D.T. Reference Case No. 1042/00 and the defence taken in the written statement filed in the proceedings of F.T. Case No. F.T./5/954/MA/19, arising out of

I.M.D.T. Reference Case No. 13/01, are similar to the claims of the petitioner to be the daughter of Sonauddin Sk, coupled with the fact that in the opinion dated 09.08.2019 passed by the learned Member, Foreigners' Tribunal No.-5th, Goalpara, in F.T. Case No. F.T./5/954/MA/19, arising out of I.M.D.T. Reference Case No. 13/01, wherein the learned Tribunal had accepted a police report disclosing the name of the father of the petitioner as Sunuddi Sk and not Monser Ali. Therefore, the Court is of the considered opinion that the petitioner has been able to make out a case substantiating her stand, all throughout that she is not the daughter of late Ekram Ali, which warrants interference with the order dated 09.11.2018, passed in W.P.(C) No. 6052/2018 in view of the said subsequent development that the petitioner has been released from the proceedings of F.T. Case No. F.T./5/954/MA/19, arising out of I.M.D.T. Reference Case No. 13/01, owing to the fact that she is the daughter of Sunuddi Sk.

10. Accordingly, the order dated 09.11.2018 passed in W.P.(C) No. 6052/2018 is hereby recalled.

11. The Registry shall now restore the proceedings of the W.P.(C) No. 6052/2018 to file and thereafter the said matter be listed again for hearing.

JUDGE

JUDGE

Comparing Assistant