

GAHC010000092020



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

Case No. : WP(C)/71/2020

KHAIRUN NESSA
D/O LT. ABDUL KHALEQUE, W/O MD. SADIR ALI, VILL. CHITALMARI BIL.
P.S. JURIA, DIST. NAGAON, ASSAM, PIN-782124

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-1

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

3:THE STATE OF ASSAM
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-6

4:THE ASSAM CO-ORDINATOR OF NRC
BHANGAGARH
ASSAM
GHY-5

5:THE DEPUTY COMMISSIONER
DIST. NAGAON
ASSAM
PIN-782002

6:THE SUPERINTENDENT OF POLICE (B)
DIST. NAGAON
ASSAM
PIN-782002

7:THE OFFICER IN CHARGE
JURIA POLICE STATION
DIST. NAGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR. M U MAHMUD

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 13-02-2023

(AM Bujor Barua, J)

Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 being the Union of India as well as respondent No.4 being the authorities under the NRC, Mr. T. Pegu, learned counsel for the respondent No.2 being the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners' Tribunal for respondents No. 3, 6 and 7 and Ms. U. Das, learned Government Advocate for the respondent No.5 being the Deputy Commissioner, Nagaon.

2. The petitioner, namely, Khairun Nessa was referred to the Foreigners' Tribunal No.4, Nagaon at Juria for an opinion as to whether she is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971. Before the Tribunal the petitioner produced Voters List of 1965 of Village Dhingbori Pathar under Rupohihat Police Station of Juria Mouza, where

in at Sl. No.30 / House No.06, appears the name of Mamud Ali. The petitioner also produced the Voters List of 1977 of the Dhingbori Pathar Village, wherein at Sl. No.108, House No.12 appears the name of A. Khaleque, son of Mamud. The petitioner claims that A. Khaleque of the Voters List of 1977 of Dhingbori Pathar village is her father.

3. To substantiate her claim, the petitioner refers to the Transfer Certificate dated 03.01.1993 issued by the Head Master of Dhingbori Pathar Muktab School of Nagaon District, wherein it is certified that Petitioner Khairun Nessa is the daughter of Abdul Khaleque of Village Dhingbori Pathar, P.S. Juria, Mahkuma – Nagaon, District – Nagaon and has studied in the Dhingbori Pathar Muktab Primary School and completed her studies on 31.12.1992.

4. As the petitioner is relying upon the school records to establish that she is the daughter of Abdul Khaleque of Village Dhingbori Pathar, as per the law laid down by this Court in the judgment dated 03.01.2019 in WP[C] 3056/2018 [Smt. Anima Das vs. Union of India and others], the petitioner is also required to examine the Head Master of the School along with the school records to establish that the contents thereof indicates that she is the daughter of Abdul Khaleque of Village Dhingbori Pathar.

5. Accordingly, the matter is remanded back to the Foreigners Tribunal No.4, Nagaon at Juria to enable the petitioner to examine the Head Master of the Dhingbori Pathar Muktab Primary School to depose from the school records, by producing the same before the Tribunal that she is the daughter of Abdul

Khaleque of Village Dhingbori Pathar.

6. For the purpose, the petitioner may make appropriate application before the Tribunal requiring the Head Master of the School to depose before the Tribunal, who shall also exhibit the school records for the purpose.

7. The petitioner shall appear before the Tribunal on 16.03.2023. Upon the aforesaid materials being produced, the tribunal shall pass a reasoned order upon the claim of the petitioner and if the reasoned order to be passed is in favour of the petitioner, the same would prevail over the opinion dated 21.10.2019, rendered in F.T. Case No.367/2015 (Police Ref. 'D' Case No.1025/98) and if it is against, the implications under the law may follow.

8. Till the reasoned order is passed no coercive action be taken against the petitioner.

9. The petition stands allowed as indicated above.

10. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant