

GAHC010000892023



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

Case No. : WP(C)/42/2023

HALIMAN NESSA
D/O- JURAN ALI,
W/O- RUPSAN ALI,
R/O- VILLAGE KAMALABARI, MOUZA- SARUKHETRI,
P.S- SARTHEBARI, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S ROAD.
BHANGAGARH
GUWAHATI-05

DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
BARPETA
P.O AND DIST- BARPETA
ASSAM
PIN-781301

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O AND DIST- BARPETA
ASSAM
PIN-781301

7:THE OFFICER IN CHARGE
SARTHEBARI POLICE STATION

P.O- SARTHEBARI
DIST- BARPETA
ASSAM
PIN-78131

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

07.06.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. PK Medhi, learned

counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Haliman Nessa had been referred to the Foreigners Tribunal No. III, Barpeta for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of F.T. Case No. 822/2013, wherein an opinion dated 22.01.2020 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1965 of village Garia Chatala which contains the name of Kuran Ali son of Abdul Nabi at serial No. 143 and that of Jalladi Bibi wife of Kuran at serial No. 144. The said voters list also contains the name of Sadhu Miya son of Kuran at serial No. 145. Further reference is made to the voters list of 1970 of village Garia Chatala, which contains the name of Kuran Ali at serial No. 165, Jalladi Bibi wife of Kuran at serial No. 166, Sadhu Miya son of Kuran at serial No. 167 and that of Juran Ali son of Kuran at serial No. 169. It is claimed that Kuran Ali is the grandfather and Juran Ali is the father of the petitioner. Reference is also made to a voters list of 1985 of village Garia Chatala, which contains the name of Doulot Jan Nessa wife of Kuran at serial No. 419, Juran Ali son of Kuran at serial No. 420, Samsul Hoque son of Kuran at serial No. 421, Faljan Begum daughter of Kuran at serial No. 422, Sampa daughter of Kuran at serial No. 423. It is claimed that Doulot Jan Nessa is another wife of Kuran and Samsul Hoque, Faljan Begum and Champa are the siblings of Juran Ali. Reference is also made to the voters list of 2010 of village Garia Chatala which contains the name of Rafikul Islam son of Juran Ali at serial No. 187 and that of Juran Ali son of Kuran Ali at serial No. 188 and Ajiran Begum wife of Juran Ali at serial No. 189. It is claimed that Rafikul Islam is the brother of the petitioner whereas Juran Ali is the father.

4. Rafikul Islam deposed before the Tribunal as DW-3 stating that the petitioner Haliman Nessa is his elder sister who was born and grew up at village Garia Chatala. In paragraph 6, he states that his father has six brothers and sisters, namely, Sharifan Nessa, Juran Ali, Samsul Ali, Fuljan Nessa, champa Nessa and Ayub Ali. The names stated in paragraph 6 of the evidence of DW-3 appears to be consistent with the voters list of 1985.

5. But, when we look at the voters list of 1965 and 1970 of village Garia Chatala, it is notice that Sadhu Miya is another son of Kuran, which would mean that he would also have to be a sibling of Juran Ali.

6. In view of the above, we remand the matter back to the Tribunal to enable the Home Department to further cross-examine the DW-3 to extract the veracity of his evidence rendered that the petitioner Haliman Nessa is his elder sister and also a daughter of Juran Ali of the voters list of 1965, 1970 and 2010 of village Garia Chatala. The respondents in the Home Department may also make their own verification as to whether Haliman Nessa is the daughter of Juran Ali of the aforesaid voters list and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon. The petitioner may be allowed to produce any further materials, if so advised.

7. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 22.01.2020 and if it goes against the petitioner, consequence as per law shall follow.

8. The petitioner shall appear before the concerned Foreigners Tribunal on 13.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

9. The writ petition is allowed as indicated above.

10. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant