

GAHC010007452018



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

Case No. : WP(C)/562/2018

HASIMON BIBI
W/O. LT. GOAHER ALI @ GOHER, VILL. PACHIM MOISHA PART-I, P.S.
AGOMONI (PREVIOUSLY GOLAKGANJ), DIST. DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA
TO BE REP. BY SECRETARY TO THE GOVT. OF INDIA, HOME DEPTT.,
NORTH BLOCK, NEW DELHI

2:THE ELECTION COMMISSION OF INDIA

NEW DELHI TO BE REP. BY THE CHIEF ELECTION COMMISSIONER OF
INDIA

3:THE STATE OF ASSAM
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.

4:THE STATE COORDINATOR OF NATIONAL REGISTRATION

ASSAM
BHANGAGARH
LACHIT NAGAR
GHY.

5:THE ADDL. DIRECTOR GENERAL OF POLICE

ASSAM (BORDER)
BHANGAGARH

GHY.

6:THE DY. COMMISSIONER

DHUBRI DISTRICT
ASSAM

7:THE SUPDT. OF POLICE (B)

DHUBRI DISTRICT
ASSAM

8:THE ELECTION OFFICER

DHUBRI DISTRICT
ASSAM.

9:THE BLOCK DEVELOPMENT OFFICER

AGOMANI DEVELOPMENT BLOCK
AGOMONI
P.O. AND P.S. AGOMONI
DIST. DHUBRI

10:THE SECRETARY

AGOMONI GAON PANCHAYAT
AGOMANI
VILL. KALDOBA
P.O. AND P.S. AGOMONI
DIST. DHUBR

Advocate for the Petitioner : MR E AHMED

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

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

ORDER

Date : 23.05.2023
(A.M. Bujor Barua, J)

Heard Mr. Z. Hammad, learned counsel for the petitioner and Ms. L. Devi,

learned counsel for the respondents No. 1 and 4, being the Union of India and the State Coordinator of NRC respectively. Also heard Mr. A.I. Ali, learned counsel for the respondents No. 2 and 8, being the authorities in the Election Commission of India; Mr. G. Sarma, learned counsel for the respondents No. 3, 5 and 7, being the authorities in the Home Department and Ms. K. Phukan, learned counsel for the respondents No. 6, 9 and 10, being the Deputy Commissioner, Dhubri, the Block Development Officer, Agomoni and the Secretary, Agomoni Gaon Panchayat respectively.

2. The petitioner Hasimon Bibi was referred to the Foreigners' Tribunal No. 10, Dhubri for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. FT(10)/AGM/397/2017 was registered. The Tribunal rendered its opinion dated 31.08.2017 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Kaldoba Pt. III which contains the name of Hasen Ali Sheikh son of Fazil at Sl. No. 102. The petitioner also relies upon the voters' list of 1977 of village Kaldoba Pt. III which contains the name Hasen Ali Fokir son of Fazil at Sl. No. 607 and that of Ulmohammed Ali son of Hasen Ali at Sl. No. 611 and both are shown to be residing in the same house No. 223. It is stated that Ulmohammed Ali son of Hasen Ali is the brother of the petitioner and the petitioner is the daughter of Hasen Ali Sheikh son of Fazil. To the substantiate that the petitioner is the daughter of Hasen Ali Sheikh, Ulmohammed Ali son of Hasen Ali had deposed before the Tribunal as DW2 where on a question being put by the Tribunal he stated that the petitioner Hasimon Bibi is his elder sister.

4. As Ulmohammed Ali has clearly established that he is the son of Hasen Ali and further that Hasen Ali Sheikh is the an Indian citizen by virtue of his name appearing in the voters' list of 1966 of village Kaldoba Pt. III and also having deposed that the petitioner is his elder sister, prima facie the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 10, Dhubri to examine the voters' lists of 1966 and 1977 of village Kaldoba Pt. III containing the names of Hasen Ali Sheikh and Ulmohammed Ali as well as the evidence rendered by DW2 Ulmohammed Ali that the petitioner is his elder sister. The State authorities may further cross-examine the DW2, if so advised. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Dhubri may also make their own verification and submit the report before the Tribunal. The petitioner may also adduce any evidence before the Tribunal, if so advised.

6. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 31.08.2017 in Case No. FT(10)/AGM/397/2017 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 07.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant