

GAHC010008952023



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

Case No. : WP(C)/316/2023

JOHURA KHATUN
W/O- SAHAJAMAL ALI,
D/O- LATE JAHIRUDDIN ALI,
R/O- VILLAGE BALARCHAR,
P.S- MERERCHAR,
DIST- BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, GRIHA MANTRALAYA , NEW DELHI- 110001.

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

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

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
BONGAIGAON

P.O AND DIST- BONGAIGAON
ASSAM

PIN-783380

6:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON

P.O AND DIST- BONGAIGAON
ASSAM

PIN-78338

Advocate for the Petitioner : MR. S C BISWAS

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

01.03.2023

(A.M. Bujor Barua, J)

Heard Mr. FA Hasan, learned counsel for the petitioner, Ms. L Devi, learned counsel for the respondents in the Union of India as well as the authorities in the NRC, Ms. A Verma, learned counsel for the respondents in the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the respondents in the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioner Johura Khatun had been referred to the Foreigners Tribunal, Bongaigaon No. 2 at Abhyapuri for rendering 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 resulting in registration of Case No. BNGN/FT-2/APR/Case No.228/2016. By the order dated 05.07.2022, the Foreigners Tribunal gave an opinion that the petitioner is a foreign citizen who entered the State of Assam subsequent to 25.03.1971. Being aggrieved, this writ petition is instituted.

3. The petitioner relies upon the voters list of 1966 of village 364 Joepa Boraichala, police station North Salmara, wherein at serial No. 114 the name of Khabar Ali Sheikh son of Omar Ali Sheikh appears. The petitioner also refers to the voters list of 1985 of village 163 Joepa Boraichala, police station Abhyapuri, wherein the name of Jahir Uddin son of Khabar Ali appears at serial No. 680. The petitioner claims that Jahir Uddin son of Khabar Ali of the voters list of 1985 is her father. To substantiate the same, the petitioner relies upon the Kabin Nama regarding the marriage of the petitioner wherein it is recorded that the father of Johura Khatun is Jahir Uddin of village Boraichala police station Abhayapuri. The petitioner also refers to a Jamabandi regarding inheritance of land of village Japaya Boroisala in respect of Jahir Uddin son of Khabar Ali where the mutation was as per the order dated 08.11.2016 of the Circle Officer in Mutation Case No. 1558/2016-17.

4. As prima-facie there is an indication from the voters list of 1966 of village 364 Joepa Boraichala as well as the voters list of 1985 of village 163 Joepa Boraichala that the father of the petitioner Jahir Uddin is a citizen of India as well as from the Kabin Nama it can also be seen that the petitioner is the daughter of Jahir Uddin, we remand the matter back to the Tribunal for passing a reasoned order on the claim of the petitioner by confining to the implication of the voters list of 1966 of village 364 Joepa Boraichala and the voters list of 1985 of village 163 Joepa Boraichala as well as the Kabin Nama of the petitioner

and pass a reasoned order thereon. Before the Tribunal, the petitioner may rely upon any other documents or materials including the Jamabandi to establish her claim.

5. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion rendered by the Foreigners Tribunal Bongaigaon No. 2 at Abhayapuri in BNB/FT-2/APR/Case No. 228/2016 and if the reasoned order to be passed is against the petitioner, the consequence as per law shall follow.

6. The petitioner shall appear before the Foreigners Tribunal No. 2 Bongaigaon at Abhayapuri on 05.04.2023. Till such reasoned order is passed, no coercive action be taken against the petitioner.

The writ petition is allowed to the extent as indicated above.

Sent back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant