

GAHC010012492023



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

Case No. : WP(C)/328/2023

MARIYAM NESSA
D/O. LT. SONA MIAH @ SONA MIYA, W/O. LT. AMIR ALI, VILL. BHERA
GAON, P.O. JAHURPAM, P.S. BARPETA, DIST. BARPETA, ASSAM.

VERSUS

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

2:THE STATE OF ASSAM

REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPT.
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE COORDINATOR

NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH

GUWAHATI
ASSAM
PIN-781005.

5:THE DEPUTY COMMISSIONER

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

6:THE SUPDT. OF POLICE (B)

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

7:THE OFFICER IN CHARGE OF BARPETA POLICE STATION

P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 04-08-2023
(AM Bujor Barua, J)

Heard Ms. H Betala, learned counsel for the petitioner. Also heard Mr. KK Parasar, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for

the respondents no. 2, 6 and 7 being the authorities under the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 5 being the Deputy Commissioner, Barpeta.

2. The petitioner Mariyam Nessa had been referred to the Foreigners' Tribunal No. 1, Barpeta for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T. Case No. 503/2018. The Tribunal rendered an opinion dated 18.08.2022 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Bhera in the present Barpeta district which contains the names of Sona Miya S/O Noimuddin at Sl. No. 46 and that of Suratjan Nessa W/O Sona at Sl. No. 47 where both are residing in the same house No. 17. It is claimed that Sona Miya is the father and Suratjan Nessa is the mother of the petitioner.

5. It is claimed that the petitioner was married with Amir Ali of the same village and consequently in the voters' list of 2022 of village Bheragaon the name of the mother Surotjan Nessa at Sl. No. 194 appears along with the petitioner Moriyom Nessa at Sl. No. 204. Suratjan Nessa had rendered evidence as DW2 wherein she deposed that Mariyom Nessa is her daughter.

6. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' list 1966 of village Bhera along with the voters' list of 2022 of village Bheragaon as well as the evidence of DW2. The respondents may further cross examine the DW2 if so advised. The petitioner to produce the

complete and continuous voters' lists of village Bheragaon from the year 1966 upto 2022. The respondents in the Home Department may make their own enquiry and verification and thereafter, submit a report before the Tribunal. Upon doing the needful, a reasoned order be passed by the Tribunal.

7. The petitioner to appear before the Tribunal on 19.09.2023.

8. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 18.08.2022 passed in F.T. Case No. 503/2018 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant