

GAHC010018082019



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

Case No. : WP(C)/620/2019

TASLIMA AHMED

D/O. LT. MOSLEM UDDIN SK @ MOSLEM UDDIN, W/O.- ABDUL MOTIN,
VILL. KHANABARI PONENAIANI, P.O. BAGRIBARI, P.S. BILASIPARA, DIST.
DHUBRI, ASSAM, PIN- 783349.

VERSUS

THE UNION OF INDIA AND 6 ORS.

REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, NEW
DELHI-01.

2:THE ELECTION COMMISSIONER OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI
01.

3:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE DEPUTY COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

5:THE SUPERINTENDENT OF POLICE (B) DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

6:THE ELECTION OFFICER

BILASIPARA
THE SUB-DIVISIONAL OFFICE
BILASIPARA
DHUBRI
ASSAM
PIN- 783348.

7:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-05

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

ORDER

Date : 04.05.2023
(AM Bujor Barua, J)

Heard Mr. HR Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 7 being the authorities under the Union of India and NRC respectively, Mr. AI Ali, learned counsel for the respondent no. 2 and 6 being the authorities under the Election Commission of India, Mr. G Sarma, learned counsel for the respondents no. 3 and 5 being the authorities under the Home Department of the Government of Assam and Ms. K Phukan, learned counsel for the respondent no. 4 being the Deputy Commissioner, Dhubri.

2. The petitioner Taslima Ahmed had been referred to the Foreigners'

Tribunal No. 6, Dhubri 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 Case No. FT.6th DBB/87/2018. The Tribunal rendered an opinion dated 31.10.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner refers to the voters' list of 1966 of village Gutipara Pt. IV PS Bilasipara in the present Dhubri district which contains the name of Moslem Uddin Sk, S/O Foraj Ali at Sl. No. 77 and that of Kadbhanu Bibi, W/O Moslem at Sl. No. 78 and both are shown to be residing in the same house No. 20. A death certificate is also relied upon in respect of Moslem Uddin Sk to indicate that he died on 11.01.2017. In order to establish that the petitioner is the daughter of Moselm Uddin Sk., reliance is placed on a school certificate issued by the Headmaster of Kathuli Para Naba Jyoti High School in the Dhubri district which contains the information that Taslima Ahmed is the daughter of Moslem Uddin Sk. of village Gutipara Pt. IV. The Headmaster of the school namely Abdul Matin Sheikh also deposed before the Tribunal as DW2 by stating, on the basis of the original admission register which was produced before the Tribunal to authenticate the information contained in the certificate, that Taslima Ahmed is the daughter of Moslem Uddin Sk. Kodbhanu Bibi, W/O Late Moslem Uddin Sheikh who was aged 77 years when the evidence was rendered as DW5 also stated that Taslima Ahmed is her daughter.

5. From such point of view it prima facie appears that the petitioner may have discharged the burden under Section 9 of the Foreigners' Act, 1946 that she is a citizen of India.

6. In view of the above, the matter is remanded back to the Tribunal to examine the voters' list of 1966 of village Gutipara Pt. IV, the school transfer certificate which is annexed as Exhibit-I, the evidence of DW2 the Headmaster of the school as well as DW5 Kodbhanu Bibi, W/O Late Moslem Uddin Sheikh and pass a reasoned order as to whether the petitioner has discharged the burden under Section 9 of the Foreigners' Act, 1946. The respondents in the Home Department may also make their own enquiry particularly as to whether Taslima Ahmed who is referred in the school certificate as well as in the evidence of DW2 and DW5 and the petitioner proceedee Taslima Ahmed are one and the same person and also whether Kodbhanu Bibi who has deposed as DW5 is actually Kodbhanu Bibi, W/O Moslem Uddin Sheikh of the voters' list of 1966 of village Gutipara Pt. IV. Upon undertaking the necessary exercise as indicated above, a reasoned be passed by the Tribunal.

7. The petitioner to appear before the Tribunal on 16.06.2023.

8. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 31.10.2018 passed in Case No. F.T.6th DBB/87/2018 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