

GAHC010019052019



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

Case No. : WP(C)/2014/2019

ASHIYA KHATOON @ MUSSTT. ASIA KHATUN @ ACHIJA KHATUN
D/O- ABED ALI SHEIKH, W/O- LT SAIFUL ISLAM, R/O- VILL-
KATHANIBARI, P.S. THELAMARA, DIST- SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
SONITPUR
P.S. AND DIST- SONITPUR
ASSAM
PIN-

4:THE SUPERINTENDENT OF POLICE (B)
SONITPUR
P.S. AND DIST- SONITPUR
ASSAM
PIN-

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE CO-ORDINATOR NRC
ASSAM

BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : ASSTT.S.G.I. (R1)

BEFORE

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

O R D E R

15.06.2023

(A.M. Bujor Barua, J)

Heard Mr. AR Sikdar, 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, Mr. J Payeng, 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. NK Das, learned counsel for the Deputy Commissioner, Sonitpur.

2. The petitioner Ashiya Khaton @ Musstt. Asia Khatun @ Achija Khatun had been referred to the Foreigners Tribunal No. 8, Tezpur for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT(8) Case No. 1851/2017, wherein an opinion dated 24.09.2018 was rendered declaring the petitioner to be a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1958 of village Nurpurjut Grant in the present Sonitpur district, which contains the name of Jahed Ali Sheikh son of Anu Sheikh at serial No. 670, Abed Ali son of Jahed

Ali at serial No. 671 and Julekha Bibi wife of Abed Ali at serial No. 673. The petitioner claims that Jahed Ali Sheikh is the grandfather, Abed Ali is the father and Julekha Bibi is the mother of the petitioner. Julekha Bibi had rendered evidence before the Tribunal as DW-2, wherein in her evidence in chief, she has stated that she is the mother of the petitioner Ashiya Khatoon, who was born and brought up at village Nurpurjut Grant in the Sonitpur district. She also states that her daughter had later on got married. In the cross examination, DW-2 reiterated that the petitioner is her daughter, who got married with late Saiful Islam, although she does not remember in which year the petitioner got married.

4. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1958 of village Nurpurjut Grant as well as the evidence of DW-2. The State through the Home Department may further cross examine the DW-2, if so advised. The petitioner shall also produce all such subsequent and continuous voters list of village Nurpurjut Grant for examination of the Tribunal. The respondents in the Home Department, Government of Assam shall also make their own verification as required by law and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 24.09.2018 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioners shall appear before the concerned Foreigners Tribunal on 20.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.
8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant