

GAHC010020222022



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

WP(C)/821/2022

MOJIRAN NESSA
D/O LATE KISMOT ALI
W/O KODAM ALI
R/O IVLL- LEWABARI
P.S. MORNOI
DIST. GOALPARA
ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE HOME AFFAIRS
GOVT. OF INDIA
SHASHTRI BHAWAN
NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
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 FOREIGNERS TRIBUNAL NO. 8TH
GOALPARA
ASSAM
DIST. GOALPARA
PIN-783101

6:THE DEPUTY COMMISSIONER
GOALPARA
P.O. GOALPARA
P.S. GOALPARA
DIST. GOALPARA
ASSAM
PIN-783101.

7:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
P.O. GOALPARA
P.S. GOALPARA
DIST. GOALPARA
ASSAM
PIN-783101

8:THE OFFICER-IN-CHARGE OF MORNOI POLICE STATION
P.O. MORNOI
DIST. GOALPARA
ASSAM
PIN-783101

Advocate for : MS. D GHOSH
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS

BEFORE

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
HON'BLE MR. JUSTICE BUDI HABUNG

14.09.2023

O R D E R

(Lanusungkum Jamir, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC for respondent Nos.1 and 4; Mr. G. Sharma, learned Standing Counsel, FT for respondent Nos.2, 7 and 8; Mr. T. Pegu, learned Standing Counsel,

ECI for respondent Nos.3 and Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for respondent No.6.

2. The petitioner is aggrieved by the opinion/order dated 23.07.2019 passed in FT Case No.891/2018 by the Foreigners Tribunal-8th, Goalpara whereby she has been declared to be a foreign national who had entered into India illegally on or after 25.03.1971.

3. To prove her linkage with her father and also that she is an Indian national, the petitioner relies on (i) the electoral roll of 1966 in respect of Ujirerchar village wherein her father, namely, Kesmot Ali, son of Lt. Alim Uddin appears at Serial No.9; (ii) the electoral roll of 1970 of Ujirerchar village where the name of her father, Keshmot Ali, son of Alim Uddin appears at Serial No.9; (iii) the electoral roll of 1979 of Ujirerchar village wherein the name of her father, Kesmot Ali, son of Aliuddin Sheikh, appears at Serial No.6 and the electoral roll of 1985 of Ujirerchar village where the name of her father, namely, Kismot Ali, son of Alimuuddin appears at Serial No.808 and the name of her mother, Moyrum Nessa, appears at Serial No.809. The petitioner also relies on the voters list of 2005 of Ujirerchar village wherein her father's name appears at Serial No.755 as Khemad Ali and her mother's name appears at Serial No.756 as Mourom Nessa. Further reliance is placed on the voters list of 2018 wherein the name of her mother, Mourom Nessa, appears at Serial No.753 of No.126 Uhjebor Char Village.

4. Reliance is further placed on the *Kabinnama* wherein the petitioner, namely, Mojiran Nessa, daughter of Kismot Ali, is shown married to one Kodam Ali, son of Meser Ali. The marriage was held on 02.03.1983 and registered on 05.03.1983. The petitioner also presses reliance on the marriage certificate issued by the Muslim Marriage Registrar and Kazi, Ghagmari wherein the petitioner is shown as daughter of Kismot Ali. Reliance is also placed on the certificate dated 24.06.2015 issued by the Gaon Panchayat Secretary of Sri Sri Suryagiri Gaon Panchayat,

Goalpara wherein the petitioner is shown as the daughter of Keshmot Ali.

5. To further prove her Indian nationality, the petitioner adduced evidence of four witnesses, namely, DW1, who is the petitioner herself, DW2, who is the uncle of the petitioner, DW3, who is the Secretary of the Panchayat concerned and DW4, who is the LDA of *Kazi's* office.

6. The electoral roll of 1966 was exhibited as Ext. A, the electoral roll of 1970 as Ext. B, the electoral roll of 1979 as Ext. C, the electoral roll of 1985 as Ext. D, the *kabinnama* of the petitioner issued by the Muslim Marriage Registrar and *Kazi*, Ghagmari as Ext.E and the linkage certificate of the petitioner issued by the Secretary, Sri Sri Suryagiri Gaon Panchayat as Ext. G.

7. We have also perused the LCRs which are before this Court and on perusal of the same, we have noticed that by order dated 08.05.2019, the Muslim Marriage Registrar and *Kazi* was summoned. Thereafter, by authorization letter dated 12.06.2019, the Muslim Marriage Registrar and *Kazi* authorized one Momtaz Ali (DW4), an LDA of the *Kazi's* office, to prove the marriage certificate. Thereafter, on evidence being taken and after hearing the parties, the impugned order/opinion dated 23.07.2019 was passed in FT Case No.891/2018.

8. A perusal of the impugned opinion/order dated 23.07.2019 would clearly disclose that there was no discussion on the evidence of DW1, DW2, DW3 and DW4.

9. With regard to Ext. E, the Tribunal was of the view that the *Kabinnama* was prepared on 05.03.1983 but scientifically it cannot be said that this paper is more than 36 years old and, therefore, the LDA (DW4) appeared before the Tribunal on behalf of Muslim Marriage Registrar and *Kazi*, Ghagmari to prove the same. Therefore, the Tribunal was of the view that there is no reason to believe the evidence tendered by the petitioner/proceedee to prove her nationality. However, on a perusal of the LCRs, we notice that the LDA (DW4) has been authorized by

the *Kazi* to prove the marriage certificate and the DW4 has also identified the signature of the Kazi.

10. In view of above, as there has been no proper discussion and proper reasoning given on the exhibits and evidences of the DWs in the order/opinion dated 23.07.2019, we remand the matter back to the Foreigners Tribunal No.8, Goalpara to re-hear FT Case No.891/2018 by appreciating all the evidence as well as the exhibits and after hearing the parties, pass a reasoned order in accordance with law.

Accordingly, the opinion dated 23.07.2019 passed by the Foreigners Tribunal-8th, Goalpara in FT Case No.891/2018 is set aside and quashed.

11. The petitioner shall appear before the Foreigners Tribunal-8th, Goalpara on 07.10.2023 and the Tribunal will proceed afresh to decide the claim of the petitioner that the petitioner is not a foreigner but a citizen of India in accordance with law. In the event, the petitioner/proceedee prays for adducing further evidence or additional evidence, the Tribunal shall consider the same and pass appropriate orders.

12. The writ petition is, accordingly, disposed of.

13. Send back the LCRs forthwith.

JUDGE

JUDGE

Comparing Assistant