

GAHC010019752017



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

Case No. : WP(C)/2259/2017

JYOTSNA BALA KHETRIYA
W/O SUBAL CHANDRA KHETRIYA D/O SIDAM CHANDRA RAJBONGSHI
R/O VILL- BELAVITA P.S. SARBHOG DIST. BARPETA, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
THROUGH - THE SECRETARY TO THE GOVT. OF INDIA, THE MINISTRY OF
HOME AFFAIRS SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

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

3:THE DEPUTY COMMISSIONER

BARPETA DISTRICT
DIST. BARPETA
ASSAM

4:THE SUPERINTENDENT OF POLICE BORDER
BARPETA DISTRICT
P.O. BARPETA
DIST. BARPETA
ASSA

Advocate for the Petitioner : MR.B CHOUDHURY

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 16.03.2023

(A.M. Bujor Barua, J)

Heard Mr. B. Choudhury, learned counsel for the petitioner and Mr. U.K. Goswami, learned counsel for the respondent No. 1, being the Union of India. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department and Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta.

2. The petitioner Jyotsna Bala Khetriya was referred to the Foreigners' Tribunal No. 11, Barpeta for an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T. Case No. 99/2016 was registered. The Tribunal rendered its opinion dated 17.09.2016 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Balabhita, Mouza Domka Chokabausi, P.S. Sorbhog in the Barpeta district wherein at Sl. No. 100 the name of Sridam Chandra Rajbongshi son of Rabicharan appears. To establish that the petitioner is the daughter of Sridam Chandra Rajbongshi of village Balabhita, the petitioner refers to a certificate issued by the Secretary of 47 No. Kalahbhanga Gaon Panchayat wherein it is provided that Jyotsna Bala Khatriya is the daughter of Sidam Chandra Rajbongshi and Sutibala Das of village Balabhita. No material is available to discern as to what is the source of information of the Secretary of 47 No.

Kalahbhanga Gaon Panchayat to certify the information that the petitioner is the daughter of Sidam Chandra Rajbongshi of village Balabhita.

4. In the circumstance, we remand the matter back to the Foreigners' Tribunal No. 11, Barpeta to enable the petitioner to render evidence of the Secretary of 47 No. Kalahbhanga Gaon Panchayat as regards the authenticity of the information that the petitioner is the daughter of Sidam Chandra Rajbongshi of village Balabhita. In the event the Secretary upon his deposition discharges the burden, it will be upon the State authorities to cross-examine the witness to extract the veracity of the information that the petitioner is the daughter of Sidam Chandra Rajbongshi. Depending on the outcome of the evidence that may be rendered, the Tribunal to pass a reasoned order as to whether the petitioner is the daughter of Sridam Chandra Rajbongshi whose name appears in the voters' list of 1965 of village Balabhita, Mouza Domka Chokabausi, P.S. Sorbhog in the Barpeta district. The petitioner may also bring any further evidence if available. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 17.09.2016 in F.T. Case No. 99/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 20.04.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

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Comparing Assistant