

GAHC010023962018



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

Case No. : WP(C)/930/2018

SABIYA KHATUN @ SHABIYA KHATUN @ SOBIYER NESSA
W/O RUSTAM ALI, R/O VILL- TOPGAON PART-I, PO-TOPGAON, PS
MERERCHAR, DIST. BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, NEW DELHI

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06

3:THE DEPUTY COMMISSIONER
BONGAIGAON
PO AND DIST. BONGAIGAON
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
PO AND DIST. BONGAIGAON
ASSAM

5:THE ELECTORAL REGISTRATION OFFICER
34 NO. ABHAYAPURI NORTH LEGISLATIVE ASSEMBLY CONSTITUENCY
DIST. BONGAIGAON
ASSAM

6:THE STATE CO-ORDINATOR OF NRC
ASSAM
PO AND PS- BHANGAGARH
GUWAHATI-05
DIST. KAMRUP (M)
ASSAM

7:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-0

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 10.05.2023
(A.M. Bujor Barua, J)

Heard Mr. S. Islam, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Bongaigaon and Mr. A.I. Ali, learned counsel for the respondents No. 5 and 7, being the authorities in the Election Commission of India.

2. The petitioner Sabiya Khatun @ Shabiya Khatun @ Sobiya Nessa was referred to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri for rendering 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

BNGN/FT-2/APR/CASE NO. 31/2016 was registered. The Tribunal rendered its opinion dated 11.01.2018 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 1966 of village Tupkarchar, Circle Srijangram in the present Bongaigaon district which contains the name of Nayeb Ali son of Johoruddin at Sl. No. 145 and that of Jomela Bibi wife of Nayeb Ali at Sl. No. 146 and both are shown to be residing in the same house No. 46. The petitioner also relies upon the affidavit of Jomela Khatun wife of Nayeb Ali of village Tupkarchar who is aged about 79 years and who had deposed as DW2 to establish that Sobiya Nessa is the daughter of Nayeb Ali of the voters' list of 1966 of village Tupkarchar.

4. It is noticed that in the voters' list of 1966, Jomela Bibi is the wife of Nayeb Ali whereas the DW2 Jomela Khatun is the wife of Nayeb Ali and therefore a question would arise as to whether the two persons are one and the same. Secondly, we have noticed that the DW2 had not been cross-examined by the authorities in the Home Department of the Government of Assam.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri to enable the Tribunal to cross-examine the DW2 on the veracity of the deposition rendered that Sobiya Nessa is the daughter of Nayeb Ali of village Tupkarchar. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Bongaigaon may also make their own physical verification in the house of DW2 Jomela Khatun to arrive at a satisfaction as to whether Jomela Khatun and Jomela Bibi of the voters' list of 1966 of village Tupkarchar are one and the same person and also as to whether the proceedee Sobiya Khatun @

Shabiya Khatun @ Sobiya Nessa is the daughter of Jomela Bibi and thereupon submit the report before the Tribunal. The State respondents in the Home Department of the Government of Assam may also make any further verification and enquiry, as may be advised. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 11.01.2018 in BNGN/FT-2/APR/CASE NO. 31/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 22.06.2023. 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.

A copy of this order be provided to Ms. A. Verma, learned counsel for the respondents in the Home Department.

J U D G E

J U D G E

Comparing Assistant