

GAHC010024342019



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

Case No. : WP(C)/843/2019

SUKITAN NESSA @ SAKITON NESSA
D/O- LT JALAL UDDIN, W/O- SOFER UDDIN, VILL- DHALAGASA, P.O.
RANGAPANI, P.S. MERERCHAR, DIST- BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS, NEW DELHI-
110001

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

3:THE DY. COMMISSIONER
BONGAIGAON
P.O. AND DIST- BONGAIGAON
ASSAM
PIN- 783380

4:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
P.O.
P.S. AND DIST- BONGAIGAON
ASSAM
PIN- 783380

5:ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE ASSAM STATE COORDINATOR OF N.R.C.
BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

Date : 21.06.2023
(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of Government of Assam, Mr. PK Medhi, learned counsel for the respondent no. 3 being the Deputy Commissioner, Bongaigaon and Mr. T Pegu, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Sukitan Nessa @ Sakiton Nessa had been referred to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri for rendering an opinion as to whether she is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of BNGN/FT/Case No. 437/2009. The Tribunal rendered an opinion dated 30.10.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Ghoramara Pt. I Police Station Uttar Salmara in the present Bongaigaon district which contains the names of Kajal Sheikh S/O Late Ash Sheikh at Sl. No. 8 and Jalaluddin S/O Kajal Sheikh at Sl. No. 11 where both of them are residing in the same house No. 3. It is claimed that Kajal Sheikh is the grandfather and Jalaluddin is the father of the petitioner. Similar information is also available in the voters' list of 1970 of village Ghoramara Pt. I. The petitioner thereupon relies upon the voters' list of 1985 of village Dhalagasa which contains the names of Jalal Uddin, S/O Kajal at Sl. No. 447 and that of Guljan Bibi, W/O Jalal at Sl. No. 448 where both of them are shown to be residing in the same house no. 17.

5. It is claimed that Jalal Uddin is the father and Guljan Bibi is the mother of the petitioner.

6. As the voters' list of 1985 is of village Dhalagasa, Mr. AR Sikdar, learned counsel for the petitioner states that Dhalagasa is a village which has been curved out from the erstwhile Ghoramara village and although the name appears to be different in the voters' list of 1985, in fact it is the same village.

7. The said submission may have some relevance inasmuch as in the voters' list of 1985 although the name of the village is Dhalagasa but the polling station is Ghoramara L.P. School. Further reliance is placed on the voters' list of 1997 of village Dhalagasa which contains the names of Guljan Bibi, W/O Jalal Uddin at Sl. No. 974 and that of Nishar Ali, S/O Jalal Uddin at Sl. No. 975 where both of them are shown to be residing in the same house no. 19. It is claimed that Nishar Ali is the brother of the petitioner.

8. As the name of Nishar Ali appears along with Guljan Nessa in the voters'

list of 1997 of village Dhalagosa and the name of Guljan Nessa appears along with the Jalal Uddin in the voters' list of 1985 of village Dhalagasa where the name of Jalal Uddin appears along with Kajal Sheikh in the voters' list of 1966 and 1970 although of village Ghoramara Pt. I, it is claimed that the petitioner has established that Nishar Ali is the brother of the petitioner. Nishar Ali is also a son of Jalal Uddin.

9. To prove that the petitioner Sukitan Nessa @ Sakiton Nessa is the daughter of Jalal Uddin, Nishar Ali had rendered evidence as DW.2 before the Tribunal stating that Sukitan Nessa @ Sakiton Nessa is his sister as well as daughter of Jalal Uddin.

10. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' lists of 1966 and 1970 of village Ghoramara Pt. I as well as the voters' lists of 1985 and 1997 of village Dhalagasa. The respondents in the Home Department to also make their own enquiry and verification and thereafter, submit a report before the Tribunal and the respondents may also cross examine DW.2 as may be advised. Upon doing the needful, a reasoned order be passed by the Tribunal.

11. The petitioner to appear before the Tribunal on 26.07.2023.

12. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 30.10.2018 passed in BNGN/FT/Case No. 437/2009 and if against, consequence under the law is applicable to the petitioner.

13. 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