

GAHC010025282023



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

Case No. : WP(C)/715/2023

LAL BHANU@MUSSTT NALBHANU KHATOON
W/O- ABU SIDDIQUE @ ABU SIDDIK, D/O- LT. NURUL SARKAR @ NURUL
@ NURUL HAQUE SARKAR, R/O- VILL- UJIRAR CHAR, P.O. UJIRAR CHAR,
P.S. ALOPATI, DIST.- BARPETA, ASSAM, PIN- 781308

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-01

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

3:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
P.O. AND DIST.- GOALPARA
ASSAM
PIN- 783101

4:THE DY. COMMISSIONER OF GOALPARA
P.O.
P.S. AND DIST.- GOALPARA
ASSAM
PIN- 783101

5:THE ELECTION COMMISISONER OF INDIA
NEW DELHI-1

6:THE ASSAM STATE COORDINATOR OF NRC

BHANGAGARH
GHY-

Advocate for the Petitioner : MR. M H TALUKDAR

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

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

ORDER

Date : 15.02.2023
(A.M. Bujor Barua, J)

Heard Mr. M.H. Talukdar, learned counsel for the petitioner and Ms. J. Sarma, 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 3, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 4, being the Deputy Commissioner, Goalpara; Mr. A. Ali, learned counsel for the respondent No. 5, being the Election Commission of India and Ms. L. Devi, learned counsel for the respondent No. 5, being the Assam State Co-ordinator of NRC.

2. The petitioner Lal Bhanu@Musstt Nalbhanu Khatoon, wife of Abu Siddique, daughter of late Nurul Sarkar of village Ujirar Char, PS Alopatti in the Barpeta district had been referred before the Foreigners' Tribunal No. 4 at Goalpara for rendering an opinion as to whether she is a person who had entered the State of Assam subsequent to 25.03.1971. After filing written statement and also exhibiting certain materials before the Tribunal, the petitioner submitted petition No. 8580 dated 07.09.2022 requesting that she be allowed to file additional w/s and further evidence inasmuch as, the petitioner could procure certain documents subsequent to the earlier filing of the written statement and

evidence. The said petition was rejected by the Tribunal by the order dated 20.12.2022 in view of the vehement objection of the learned Government pleader appearing for the State authorities and also on a technical ground that the petitioner had not mentioned anything about such existence of land documents in her initial written statement.

3. The proceedings before the Tribunal are under Section 9 of the Foreigners Act, 1946, where the burden of proof is on the proceedee to show that he or she is a citizen of India. Instead of adverting to the strict technicalities of the procedure applicable in respect of a civil suit, we are of the view that the interest of justice would be met if the proceedee is given the opportunity as may be sought for to discharge the burden that the proceedee is a citizen of India. However, at the same time it cannot be that repeatedly further written statements and evidences would be sought to be brought in during the proceeding inasmuch as, there also has to be an end to the proceedings that are before the Tribunal.

4. Accordingly, the petitioner is granted one further liberty to submit any additional written statement or any further material that she may desire to rely upon to discharge the burden that she is a citizen of India. The opportunity given be accordingly availed by the petitioner on the next date of her appearance and if any such material is produced, the Tribunal may examine the same and pass its reasoned order on the claim of the petitioner. The petitioner to appear before the Tribunal along with additional w/s and any further material on 09.03.2023. The Tribunal is requested to thereafter render its opinion as expeditiously as possible without any further undue delay. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

J U D G E

J U D G E

Comparing Assistant