

GAHC010026852020



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

Case No. : WP(C)/824/2020

AMIRAN NESSA

D/O- LATE CHANDU ALI, W/O- ABDUL MAJID, PERMANENT R/O- VILL-
KOWARPUR, P.S- HAJO, DIST- KAMRUP, ASSAM, PIN- 781102

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

4:THE DEPUTY COMMISSIONER
KAMRUP
PIN- 781031

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP
PIN- 781031

6:THE STATE COORDINATOR
NRC
BHANGAGARH
GUWAHATI- 0

Advocate for the Petitioner : MR. S B RAHMAN
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE NELSON SAILO**

O R D E R

05.06.2023

(A.M. Bujor Barua, J)

Heard Mr. AW Aman, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. NK Das, learned counsel for the Deputy Commissioner, Kamrup(R).

2. The petitioner Amiran Nessa had been referred to the Foreigners Tribunal No. 4, Kamrup(R) for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of H.F.T. Case No. 1233/2015, wherein an opinion dated 20.09.2019 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1966 of village No. 3 Saprapara, Mouza madhyam Barkhetri in the Kamrup district, which contains the name of Chandu Seikh son of Achan at serial No. 4 and that of Gajjran Seikh son of Chandu at serial No. 6 and both of them are shown to be residing in the same house No. 2.

4. Garjan Ali son of Chandu had rendered evidence before the Tribunal as

DW-2, wherein he had deposed that the petitioner Amiran Nessa is his younger step sister and that she had casted vote for the first time in the year 1997 at village Kowarpur after her marriage to Abdul Majid in the year 1995. He further stated that his father also casted vote in the year 1966 along with him and he died in the year 1982. But his father also casted vote at village Bhangnamari after he had shifted to Bhangnamari in the year 1972.

5. In view of the above, we remand the matter back to the Tribunal to examine the DW-2 Garjan Ali and arrive at its conclusion regarding the veracity and acceptability of the said evidence. The respondents in the Home Department may also cross-examine the DW-2 to the extent as required. The DW-2 to also show sufficient materials before the Tribunal that Garjan Ali the DW-2 and Gajjran Seikh son of Chandu of the 1966 voters list of village No. 3 Saprpara are one and the same person. Upon doing the needful, the Tribunal may pass its reasoned order.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 20.09.2019 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the concerned Foreigners Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant