

GAHC010028602018



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

Case No. : WP(C)/886/2018

RAJEYA BEWA @ REJIYA BEWA
W/O- LATE SAFAR ALI, R/O- VILL- CHAR NO. 6, P.S- JOGIGHOPA, DIST-
BONGAIGAON, ASSAM, PIN- 783382

VERSUS

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

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

3:THE DEPUTY COMMISSIONER
BONGAIGAON
DIST- BONGAIGAON
ASSAM
PIN- 783380

4:THE SUPERINTENDENT OF POLICE(B)
BONGAIGAON
DIST- BONGAIGAON
ASSAM
PIN- 783380

5:THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

6:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
1ST FLOOR
ACHYUT PLAZA
BHANGAGARH
GUWAHATI- 78100

Advocate for the Petitioner : MR. S S S RAHMAN

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

26.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. S.S.S. Rahman, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. A.I. Ali, learned standing counsel, ECI, for respondent No.5 and Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Rajeya Bewa had been referred to the Foreigners' Tribunal, Bongaigaon No.2, Abhayapuri, 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, which resulted in registration of BNGN/FT/Case No.1062/2010. The Tribunal rendered an opinion dated 19.01.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1966 of village Besimari, P.S.-Abhayapuri, containing the name of Abdul Hussain S/o Ashimuddin at Sl.No.16 and that of Jabeda Khatun W/o Abdul Hussain at Sl. No.17, which information is also available in the voters list of 1970 of village Besimari. Jabeda Khatun W/o Abdul Hussain, aged 65 years, resident of village Besimari as DW-2 had rendered evidence that Rajeya Bewa is her daughter. Jabeda Khatun in the voters list of 1970 is shown to be 26 years and therefore, when she rendered evidence before the Tribunal in the year 2016, her age shown to be 65 years, which appears to be more or less consistent. When a person renders opinion before the Tribunal stating that the proceedee is his or her son or daughter, the same would carry its own evidentiary value. But in the instant case it is noticed that in 2018 when the writ petition was filed, the petitioner Rajeya Bewa had described her age 56 years meaning thereby that she will be around 54 years in 2016. Jabeda Khatun was 65 years in the year 2016 and Rajeya Bewa was 54 years meaning thereby that Rajeya Bewa must have been born when Jabeda Khatun was about 11 years old.

4. Although we are remanding the matter back to the Tribunal, the Tribunal to also explore the aforesaid aspect as to whether Rajeya Bewa the petitioner could be the daughter of Jabeda Khatun in view of the respective ages of Jabeda Khatun and Rajeya Bewa. The Tribunal upon considering the aforesaid aspect and also taking note of the evidence of Jabeda Khatun shall pass a reasoned order. The respondents in the Home Department may make their own verification as to whether Rajeya Bewa the petitioner is actually the daughter of DW-2 Jabeda Khatun and submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 19.01.2018 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 24.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. Send back the LCR immediately.
7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant