

GAHC010029462021



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

Case No. : WP(C)/1113/2021

NUREJA BEGUM
D/O LATE NURUL HOQUE @ NUR HOQUE ALI
W/O NASIRUDDIN AHMED
VILLAGE JAJORI BOGORIGURI, PO AND PS JAJORI, DIST NAGAON,
ASSAM, 782142

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR GUWAHATI 6

3:THE ELECTION COMMISSION OF INDIA

NEW DELHI 110001

4:THE DEPUTY COMMISSIONER

NAGAON
782002

5:THE STATE CO ORDINATOR

NATIONAL REGISTER OF CITIZENS
ASSAM
GUWAHATI 781005

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
ASSAM 78200

Advocate for the Petitioner : MR F U BARBHUIYA

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

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

ORDER

23.03.2023

(AM Bujor Barua, J)

Heard Mr. FU Barbhuiya, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. J Payeng, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Nagaon and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Nagaon.

2. The petitioner, Nureja Begum, was referred to the Foreigners Tribunal No.1 Nagaon for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T. Case No.59/18 corresponding to S.P.(B) Ref. Case No.01/18 wherein an opinion

dated 18.01.2021 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. The petitioner relies upon the voters list of 1965 of village Bormonipur, Mouza Silpukhuri, P.S. Raha, district Nagaon which contains the name of Dilnur Ali, son of Baneshwar at Sl.No.688 and that of Nur Hoque, son of Dilnur at Sl.No.691 and both of them reside in the same House No.160. The petitioner also relies upon the voters list of 1970 of village Bormonipur, Mouza Silpukhuri, P.S. Raha, district Nagaon, wherein at Sl.No.613 contains the name of Nurhoque, son of Dilnur. The petitioner thereafter relies upon the voters list of 1989 of village Bormonipur, Mouza Silpukhuri PS Mikirbheta in the Nagaon district which contains the name of Nurul Hoque at Sl.No.105 and that of Nurej Begum, daughter of Nurul Hoque at Sl.No.107 and both of them reside at House No.32. The petitioner claims Nurul Hoque of 1970 voters list of village Bormonipur, Mouza Silpukhuri, P.S. Raha, district Nagaon to be her father.

5. The petitioner also relies upon a certificate dated 14.09.1989 issued by the Principal Jajari HS School which contains the information that Nureja Begum is an inhabitant of village Jajari, PO: Bormanipur, PS Mikirbheta in the Nagaon district as well as the certificate issued by the Principal of Jajari HS School dated 20.12.2016 wherein the information contained is that Nureja Begum is the daughter of Nurul Hoque, an inhabitant of village Jajari, PO Jajari, PS Jajari in the Nagaon district.

6. As the voters list relied upon by the petitioner is of village Bormonipur and the school certificate is of village Jajari indicating the residence of the father of Nureja Begum, Mr. FU Borbhuiya, learned counsel for the petitioner seeks to explain the situation by stating that the village Jajari is a big area and village Bormonipur is a part of the area within Jajari itself.

7. Mr. J Payeng learned counsel for the Home Department Government of Assam has raised the following objections which is as below:

“That in the voters list of 1997 the residence of the petitioner is shown as village Bormonipur, PS Mikirbheta, whereas in the school certificate of the year 1989 shows the residence of the petitioner as Jajari. Both cannot be correct either she has to be residence of Bormonipur or Jajari”.

8. The said submission of Mr. J Payeng, learned counsel for the Home Department makes it discernible that an objection is raised that if the name of the petitioner appears in the voters list of Bormonipur, she could not have been reading in a school at Jajari. In other words, there is a presumption by the State authorities that Bormonipur and Jajari are two different places located separately. But an explanation had already been rendered by Mr. FU Borbhuiya, learned counsel for the petitioner that Jajari is a bigger area and that Bormonipur is an area within Jajari. Neither the submission of the learned State counsel nor the explanation by Mr. FU Borbhuiya can be verified by the Court in a writ proceeding. But fundamentally as the petitioner has raised a claim that she is Nuruja Begum, daughter of Nurul Hoque whose name appears in the

voters list of 1989 of village Bormonipur, Mouza Silpukhuri, P.S. Mikirbheta, District Nagaon and the name of Nur Hoque along with his father Dilnur appears in the voters list of 1965 and 1970 which would indicate that Nur Hoque himself is a citizen of India and the petitioner may be his daughter, a prima facie link may have been established by the petitioner that she is a citizen of India. The aforesaid aspect requires a further examination.

9. Accordingly, the matter stands remanded back to the Tribunal to examine as to whether the voters list of 1965, 1970 and 1989 in respect of village Bormonipur in the Nagaon district indicate that the petitioner is a citizen of India. In doing so, the two school certificates as indicated above be also examined.

10. The petitioner may examine the Principal of the school concerned to be present before the Tribunal along with the school records to corroborate the information contained in the two school certificates regarding Nureja Begum and her father Nurul Hoque.

11. Regarding the objections raised by Mr. J Payeng, learned counsel for the Home Department that village Bormonipur and Jajari are two different places, the respondents in the Home Department, through the Superintendent of Police (B) Nagaon shall verify the factual aspect and submit a report and material before the Tribunal as to whether it indicates that the two are same place or both are different and distinct places away from each other.

12. Accordingly, the petitioner shall appear before the Tribunal on 28.04.2023.

13. The Tribunal upon examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the order dated 18.01.2021 of the Foreigners Tribunal No.1, Nagaon in F.T. Case No.59/18 corresponding to S.P.(B) Ref. Case No.01/18 and if it is against the petitioner, consequential action under the law shall follow.

14. Till the reasoned order is passed, no coercive action be taken against the petitioner.

15. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant