

GAHC010030572023



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

Case No. : WP(C)/868/2023

SMTI. LAKHI DEBNATH
D/O SRI HARADHAN DEBNATH, W/O SRI RATAN DEBNATH, R/O VILL-
DOBOKA TOWN, WARD NO. 6, P.S.-DOBOKA, DIST-HOJAI (ASSAM)

VERSUS

THE UNION OF INDIA AND 5 ORS.
TO BE REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-
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2:THE STATE OF ASSAM
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY OF
HOME DEPARTMENT
DISPUR
GUWAHATI
ASSAM

3:THE SUPERINTENDENT OF POLICE (BORDER)
HOJAI
ASSAM
PIN-782435

4:THE DEPUTY COMMISSIONER
HOJAI
P.O. AND DIST-HOJAI
ASAM
PIN-782435

5:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GUWAHATI-5

6:THE ELECTION COMMISSIONER OF INDIA
NEW DELH

Advocate for the Petitioner : S AHMED

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

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

JUDGMENT & ORDER (ORAL)

17.02.2023

(AM Bujor Barua, J)

Heard Mr. S Ahmed learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Hojai and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Hojai.

2. The petitioner, namely, Lakhi Debnath was referred by the Foreigners Tribunal-3rd Hojai at Sankardev Nagar for an opinion as to whether she is a person who had entered the State of Assam subsequent to 25.03.1971 resulting in the registration of F.T.(D) Case No.370/2015 against her.

3. By the order dated 05.05.2016 of the Foreigners Tribunal No.10 Nagaon,

an opinion was rendered that the petitioner is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971.

4. Being aggrieved WP(C)No.6753/2016 was instituted and by the order dated 14.02.2019, the writ petition was dismissed. The petitioner instituted Review Pet. No.94/2021 against the order dated 14.02.2019 in WP(C)No.6753/2016 and in the review petition, by the order dated 24.02.2022, the petitioner was allowed to examine her father Haradhan Debnath before the Tribunal and accordingly the matter was remanded back. Consequent thereof, the opinion dated 28.09.2022 was rendered by the Tribunal.

5. Before the Tribunal, upon the matter being remanded back, the petitioner examined Haradhan Debnath who she claims to be her father and the Tribunal by the opinion dated 28.09.2022 had arrived at its conclusion as extracted:

“Observation: On the basis of production and proof of Ann-V/Ext.5, it appears that the O.P. has properly substantiated her claim that she is a daughter of Sri Haradhan Debnath”

6. A reading of the afore-extracted conclusion arrived by the Tribunal makes it discernible that the Tribunal was satisfied that the petitioner had substantiated that her father is Haradhan Debnath. The name of Upendra Chandra Debnath, father of Haradhan Debnath appears in the voters list of 1966 of village Hojai Town Ward No.6. In the voters list of 1970 of village Hojai Town Ward No.6, the name of Upendra Chandra appears at Sl.No.1228 and the name of Haradhan Son of Upendra Chandra appears at Sl.No.1230. If Haradhan Debnath is

established to be the father of the petitioner and his name appears in the voters list of 1970 of village Hojai Town Ward No.6 along with his father Upendra Chandra, where the name of the grandfather also appears in the voters list of 1966, we are of the view that the petitioner deserves a declaration that she is otherwise a citizen of India and it is declared accordingly.

7. The reasoning by the Tribunal in its order dated 28.09.2022 in F.T.(D) Case No.370/2015 by referring to certain other materials cannot be acceptable in law, *inasmuch as*, through the relevant materials on record, the petitioner had clearly established her case and discharged the burden under Section 9 of the Foreigners Act 1946.

8. Consequently, all such legal rights that may accrue to the petitioner Lakhi Debnath upon such declaration that she is a citizen of India be made available to her.

9. Writ petition, accordingly, stands allowed.

JUDGE

JUDGE

Comparing Assistant