

GAHC010031002018



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

Case No. : WP(C)/943/2018

TOHORA KHATOON
W/O MD. HASMAT ALI
VILL- DIJUVALLE, P.S. SAMAGURI
DIST. NAGAON, ASSAM

VERSUS

UNION OF INDIA AND 5 ORS
TO BE REP. BY SECRETARY TO THE GOVT. OF INDIA,
HOME DEPARTMENT,
NORTH BLOCK,
NEW DELHI

2:THE STATE OF ASSAM
TO BE REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06.

3:DEPUTY COMMISSIONER
NAGAON
ASSAM

4:ELECTION COMMISSION OF INDIA
TO BE REP. BY DISTRICT ELECTION OFFICER
NAGAON
ASSAM

5:SUPERINTENDENT OF POLICE (BORDER)
NAGAON
ASSAM

6:STATE CO-ORDINATOR
NRC
ACHYUT PLAZA
BHANGAGARH
GUWAHATI - 781005

Advocate for the Petitioner : MR. N H MAZARBHUIYAN

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

BEFORE
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

26.04.2023

(AM Bujor Barua, J)

Heard Ms. L. Wajeeda, 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. A.I. Ali, learned counsel for the authorities under the Election Commission of India, Mr. A. Kalita, 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, Ms. Tohora Khatoon had been referred to the Foreigners Tribunal (2nd), 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 registration of F.T. Case No.1555/2011. The learned Tribunal rendered an opinion dated 27.11.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding, the petitioner relies on the voters list of 1971 of village Teliabebeji, P.S. Rupohihat in Nagaon District which contains the name of Sabu Ali, son of Taleb at Serial No.1199 and Amina Khaatoon, wife of Sabu at Serial No.1200 where both are shown to be residing in the same House No.192. The petitioner also relies on a school transfer certificate issued by the Headmaster of Juria Girls' High School, Juria, Nagaon which contains the information that Tahura Khatun is the daughter of Sabu Sekh who is resident of village Teliabebejia. Accordingly, the petitioner claims that she had discharged the burden under Section 9 of the Foreigners' Act, 1946 that she is a citizen of India. The petitioner also refers to certain other order of the Foreigners Tribunal No.4, Nagaon, Juria in F.T. Case No.69/2015 and F.T. Case No.86/2015 wherein Md. Ramjan Ali, son of Sabu Sheikh and Md. Mamtaj Ali, son of Sabu Sheikh of village Teliabebejia by which had been declared to be a citizen of India vide order dated 05.02.2016. The petitioner claims that Md. Ramjan Ali and Md. Mamtaj Ali are her own brothers and they have been declared to be Indian citizens. Therefore, the petitioner is also an Indian citizen.

5. With regard to the school certificate relied on by the petitioner, it is noticed that the author of the certificate being the Headmaster of Juria Girls' High School had not been examined along with the original records of the school admission register.

6. Under the circumstances, the matter is remanded back to the Tribunal to enable the petitioner to examine the Headmaster of Juria Girls' High School along with the original school admission register to substantiate the information contained in the school certificate. The petitioner be also allowed to render any evidence that Md. Ramjan Ali and Md. Mamtaj Ali, both sons of Sabu Sheikh of village Teliabebejia, P.S. Juria, Dist.- Nagaon, Assam with reference to F.T. Case

No.69/2015 and F.T. Case No.86/2015 of the Foreigners Tribunal No.4, Nagaon are the brothers of the petitioner.

7. The Superintendent of Police (Border), Nagaon may also make their own verification on the materials as may be produced by the petitioner.

8. Upon undertaking the aforesaid exercise, a reasoned order be passed by the Tribunal.

9. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.11.2017 rendered in F.T. Case No.1555/2011 and if it goes against the petitioner, consequence as per law shall follow.

10. The petitioner shall appear before the Foreigners Tribunal No.2, Nagaon on 09.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

11. The writ petition is disposed of as indicated above.

12. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant