

GAHC010035312017



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

Case No. : WP(C)/4965/2017

1. ABEDA BIBI
W/O ABED ALI, D/O ANAMOT MIAH @ ANAMOT SK., VILL-KHERBARI
PART IV, PS-AGOMONI PREVIOUSLY GOLAKGANJ, DIST. DHUBRI ASSAM

VERSUS

1. THE UNION OF INDIA and 3 ORS.
REP. BY ITS SECRETARY OF THE MINISTRY OF HOME AFFAIRS, UNION OF
INDIA, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER OF DHUBRI DISTRICT
AT DHUBRI
PO
PS and DIST. DHUBRI
ASSAM

4:THE SUPERINTENDENT OF POLICE B
PO
PS and DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR.K RAHMAN

Advocate for the Respondent : GA, ASSAM

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

JUDGMENT

Date : 10-04-2023

(AM Bujor Barua, J)

Heard Mr. A.T. Sarkar, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 being the Union of India, Mr. G. Sarma, learned Counsel appearing for the Home Department of Government Assam for the respondent No.2 & 4 and Ms. U. Das, learned Advocate for the respondent No.3 being the Deputy Commissioner, Dhubri.

2. The petitioner, namely, Abeda Bibi has been referred to the Foreigners' Tribunal, 10th Dhubri for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of F.T. Case No.FT(10)/AGM/241/2016. The Tribunal rendered an opinion dated 30.06.2017 declaring the petitioner to be an illegal migrant. Being aggrieved this Writ Petition is instituted.

3. In the Writ Petition, the petitioner relies upon the Voters List of 1954 of Taluk Ghutarkuti, Police Station Tufanganj, J.L./Thak No.1081 in the Cooch Behar District of West Bengal, which contains the name of Anamod Miah son of Hujur Mamud who is claimed to be the father of the petitioner. To substantiate that Anamod Miah is the father of the petitioner, the petitioner relies upon the evidence rendered by Alkas Miah @ Alkas Hussain, son of Late Anamod Miah of village Ghogarkuti wherein it is deposed that petitioner Abeda Bibi is the younger sister of Alkas Miah @ Alkas Hussain. The Voters List of the year 1968 of Village Ghogarkuti Ward No.1 in the Cooch Behar District of West Bengal has also been relied upon which contains the name of Mia Anamot son of Huzir Mamud at Sl. No.253 and that of Miah Alkas Hossain son of Anamot at Sl. No.254 and that of Bhobijan Khatun wife of Anamot at Sl. No.255.

4. The petitioner also relies on the evidence rendered by Miah Alkas Hossain as Alkas Miah @ Alkas Hussain, son of Late Anamod Miah of village Ghogarkuti wherein it is deposed

that the petitioner Abeda Bibi is his younger sister who was born in Village Ghogarkuti under Police Station Tufanganj in the Cooch Behar District of West Bengal and subsequently married to Abed Ali son of Tosor Uddin of village Gharialdanga Part-II under Police Station Golakganj in the Dhubri District of Assam. In his cross-examination Alkas Miah @ Alkas Hussain stated that his father died about 24 years back and his mother is also not alive. He deposed in cross that they are four brothers and three sisters and the younger sister is aged about 35 years.

5. The Voters Lists of 1954 and 1968 of Village Ghogarkuti under Police Station Tufanganj in the Cooch Behar District of West Bengal if correct, would establish that Miah Alkas Hussain, son of Anamod is a citizen of India and Alkas Miah @ Alkas Hussain being the son of Anamod Miah of village Ghogarkuti rendered evidence that petitioner Abeda Begum is his younger sister and daughter of Anamod Miah. In cross the authorities in the Home Department could not rebut the evidence that the petitioner is the younger sister of the witness and daughter of Anamod Miah of Village Ghogarkuti. But the Tribunal rejected the evidence of DW.3 Alkas Miah @ Alkas Hussain on some doubts having arisen but the reason as to why the doubts have arisen is not discernable nor acceptable.

6. Accordingly the matter is remanded back to the Tribunal for fresh appreciation of the Voters Lists of 1954 and 1968 of Village Ghogarkuti under Police Station Tufanganj in the Cooch Behar District of West Bengal as well as the evidence of the DW.3 and pass a reasoned order thereon. It is stated that in the meantime DW.3 Alkas Miah @ Alkas Hussain had died and the Tribunal may also look into the law as regards the application of the evidence rendered by a witness who had died in the meantime, while passing the reasoned order.

7. The respondent Home Department may cause a verification as to whether Alkas Miah @ Alkas Hussain who deposed before the Tribunal as DW.3 and Alkas Miah @ Alkas Hussain, son of Late Anamod Miah of village Ghogarkuti in the Cooch Behar District of West Bengal are one and the same person.

8. The petitioner to appear before the Tribunal on 26.05.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 30.06.2017, passed in F.T. Case No.FT(10)/AGM/241/2016 and if it is against her, the consequence under the law may follow.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.
10. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant