

GAHC010041582023



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

Case No. : WP(C)/1367/2023

MUSSTT JAYNAB KHATUN @ JOYNAB KHATUN
W/O ABDUL HALIM AHMED @ ABDUL HALIM, D/O LT. SUNAR UDDIN, R/O
VILL-BAGAIJANPARA, P.O.-JASHIHATIPALA, P.S.-HOWLY, DIST-BARPETA,
ASSAM, PIN-781316

VERSUS

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

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DEPUTY COMMISSIONER
BARPETA
DIST-BARPETA
ASSAM
PIN-781301

4:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
DIST-BARPETA
ASSAM
PIN-781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI

PIN-110001

6:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
PIN-78100

Advocate for the Petitioner : MR A A DEWAN

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

BEFORE

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

O R D E R

15.03.2023

(A.M. Bujor Barua, J)

Heard Mr. AA Dewan, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned Government Advocate for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Musstt. Jaynab Khatun @ Joynab Khatun was referred to the Foreigners Tribunal, Bajali, Barpeta, Assam 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 resulting in registration of FT Case No. 459/2017. The Foreigners Tribunal by the opinion dated 14.07.2022 opined that the petitioner is a foreigner who entered the State of Assam subsequent to 25.03.1971. Being aggrieved, this writ petition is instituted.

3. The petitioner relies upon a voters list of 1965 of village Silapatni, part-21, police station Sorbhog, Mouza- Bijni, district Barpeta, which contains the name of Sunaruddin son of Kabil Ali at serial No. 4. The petitioner also refers to a school certificate dated 15.05.1984 issued by the Head Teacher of 903 No. Silapatni School, which contains the information that Joynab Khatun is the daughter of Sonauddin Miya of village Silapatni. But it is stated that the Head Teacher of the school has not been examined.

4. It is a requirement of law to examine the Headmaster of the school who issued the certificate to prove the contents of the certificate as provided in the judgment dated 03.01.2019 in WP(C) No. 3056/2018 (Anima Das –vs Union of India and others). Accordingly, the information contained in the school certificate has to be proved by the Head Teacher by bringing the original records of the school before the Tribunal.

5. Accordingly, the petitioner to approach the Tribunal for bringing the evidence of the Head Teacher of 903 No. Silapatni School along with the school records to establish the contents of the school certificate dated 15.05.1984. But, it is taken note that the school certificate bears serial No. 86321, meaning thereby that 86320 certificates had already been issued by the said school.

6. The Tribunal may verify to whom the other 86320 certificates were issued and how a village LP School was required to issue 86320 certificates, so as to entail the serial No. 86321 in the certificate at hand. It is also noticed that the certificate contains the national emblem, which is impermissible for a Head Teacher of a school to use and also that the certificate is issued in a fixed format, where only the blanks are to be filled up rather than it being a certificate issued based upon the materials on record.

7. Although we require the Tribunal to make the enquiry regarding the nature of the certificate, but, if the Head Teacher adduces the evidence before the Tribunal based on the school records and the school records supports the information contained in the school records, the Tribunal may give due consideration to it and also examine as to whether it establishes the link that the petitioner Joynab Khatun is the daughter of Sonauddin of village Silapatni, whose name appears in the voters list of 1965 of the same village.
8. Upon examination of the Head Teacher, the Tribunal may pass a reasoned order.
9. If the reasoned order is in favour of the petitioner, the same would prevail over the earlier opinion rendered by the Foreigners Tribunal, Bajali, Barpeta in FT Case No. 459/2017 and if the reasoned order goes against the petitioner, consequence as per law shall follow. Till such reasoned order is passed, no coercive action be taken against the petitioner.
10. The petitioner shall appear before the Foreigners Tribunal, Bajali, Barpeta on 19.04.2023.
11. The writ petition is allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant