

GAHC010046612017



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

Case No. : WP(C)/6563/2017

MUSSTT. HAMELA KHATUN @ HAMEDA KHATUN
W/O. RAHIM UDDIN, D/O. ABDUL GAFUR, R/O. VILL. TAPESWARA, P.S.
KALGACHIA, DIST. BARPETA, ASSAM, PIN-781319.

VERSUS

THE UNION OF INDIA and 6 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE DY. COMMISSIONER
SIVASAGAR

DIST. SIVASAGAR
ASSAM
PIN-785640.

4:THE SUPERINTENDENT OF POLICE B
SIVASAGAR

DIST. SIVASAGAR
ASSAM
PIN-785640.

5:THE DY. COMMISSIONER
JORHAT

DIST. JORHAT
ASSAM
PIN-785001.

6:THE SUPERINTENDENT OF POLICE B
JORHAT

DIST. JORHAT
ASSAM
PIN-785001.

7:THE DISTRICT ELECTORAL REGISTRATION OFFICER

51 JANIA LAC
BARPETA
ASSAM
PIN-781301

Advocate for the Petitioner : MS. M GOGOI

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 16.05.2023
(AM Bujor Barua, J)

Heard Mr. SA Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondent no. 1, being the authorities under the Union of India, Mr. G Sarma, learned counsel for the respondents no. 2, 4 and 6 being the authorities under the Home Department of the Government of Assam, Mr. TR Gogoi, learned counsel for the respondents no. 3 and 5 being the Deputy Commissioner, Sivsagar and Deputy Commissioner, Jorhat respectively and Mr. AI Ali, learned counsel for the respondent no. 7 being the Election Commission of India.

2. The petitioner Hamela Katun @ Hameda Khatun had been referred to the Foreigners' Tribunal, Jorhat for rendering an opinion as to whether she is a person who entered the State of Assam on or after 25.03.1971, resulting in registration of Case No. FT/SVR/151/14. An opinion dated 21.08.2017 had been rendered by the Tribunal 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 1966 of village Tapeswara which contains the name of Chomar Dewani, S/O Bhomar at Sl. No. 12 and that of Manikjan Nessa, W/O Chomar at Sl. No. 13. It is claimed that Chomar Dewani is the grandfather and Manikjan Nessa is the grandmother of the petitioner. Reference is also made to the voters' list of 1970 of village Tapeswara which contains the name of Chomar Dewani, S/O Bhomar at Sl. No. 17 and Manikjan Nessa, W/O Chomar at Sl. No. 18 and that of Abdul Gaffur, S/O Chomar at Sl. No. 19 and all three of them are shown to be residing in the same house no. 5.

5. Abdul Gafur, S/O Samar Dewani of village Tapeswara has deposed before the Tribunal as O.P. No. 2 wherein he makes a specific statement that he has five sons and three daughters and the names of his daughters are Hamela Khatun, Hawa Khatun and Hafiza Khatun. He specifically states that the writ petitioner proceedee is his daughter Hamela Khatun. In the cross examination by the State the evidence rendered that Hamela Khatun is the daughter of O.P. No. 2 could not be demolished in any manner.

6. In the circumstance under the law there is no reason as to why the evidence of O.P. No. 2 should not be accepted and accordingly, conclude that the petitioner has discharged the burden under Section 9 of the Foreigners' Act,

1946 that she is a citizen. In the circumstance, the matter stands remanded back to the Tribunal to allow the State respondents to further cross examine the O.P. No. 2, if necessary.

7. The State respondents in the Home Department may also make their own enquiry and verification in the family of Abdul Gafur, S/O Late Samar Dewani of village Tapeswara to arrive at a conclusion as to whether Hamela Khatun is the daughter of Abdul Gafur and upon doing the needful, to submit a report before the Tribunal. Upon doing the needful, the Tribunal to pass a reasoned order.

8. In paragraph 17 of the opinion of the Tribunal it had been held as extracted:

“17. Though from the depositions of the witnesses it is provided the proceedee is the daughter of Abdul Gafur, but proceedee has failed to prove her father as son of Chomor Dewani, S/O Bhomor, whose name is recorded in the electoral rolls for the year 1966 & 1970. Accordingly the proceedee has failed to prove the existence of her ancestors prior to the year 1966 or during the period from 1.1.1966 to 24.3.1971. Hence the proceedee has failed to prove her Citizenship.”

9. The reasoning of the Tribunal appears to be absurd inasmuch as the Tribunal had accepted that from the depositions of the witnesses it is proved that the proceedee is the daughter of Abdul Gafur but the proceedee had failed to prove that her father to be the son of Chomar Dewani. The voters' list of 1970 of village Tapeswara shows the name of Chomar Dewani, S/O Bhomar and Abdul Gafur, S/O Chomar Dewani at Sl. No. 17 and 19 and both are shown to be residing in the same house no. 5. If Abdul Gafur is not the son of Chomar Dewani, no reason is forthcoming as to why they are residing in the same household. The further reasoning that the proceedee had failed to prove the

existence of her ancestors prior to 1966 and therefore, to conclude that the proceedee had failed to discharge the burden is also unacceptable inasmuch as if the father and grandfather existed in the year 1966 that is enough of material that they would be citizens under the law and therefore, the proceedee who had discharged the burden to prove that she is the daughter of Abdul Gafur had also discharged the burden.

10. The petitioner to appear before the Tribunal on 30.06.2023.

11. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 21.08.2017 passed in Case No. FT/SVR/151/14 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant