

GAHC010049082020



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

Case No. : WP(C)/1579/2020

ARCHANA SAHA
W/O SRI DIPAK KR. SAHA, D/O LT. SUSHIL KR. SAHA, VILL. BIDYAPUR,
WARD NO. 2, NALBARI TOWN, P.O. NALBARI, PS. NALBARI, PIN-781335,
DIST. NALBARI, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY THE HOME AFFAIRS, NEW DELHI-110001

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-781006

3:THE SUPERINTENDENT OF POLICE (B)
NALBARI
ASSAM
PIN-781337

4:THE DEPUTY COMMISSIONER
NALBARI
ASSAM
PIN-781335

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

6:STATE CO-ORDINATOR
NRC
ASSAM
GUWAHATI-5

7:THE FOREIGNERS TRIBUNAL-1

NALBARI
P.O. NALBARI
DIST. NALBARI
ASSAM
PIN-78133

Advocate for the Petitioner : MR. S C PANDIT

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

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

ORDER

11.08.2023

[A.M.Bujor Barua, J.]

Heard Mr. S.C. Pandit, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned counsel for the Home Department; Ms. L. Devi, learned counsel for the NRC and UoI; Mr. P. Sarma, learned counsel for the DC; and Mr. T. Pegu, learned counsel for the ECI.

2. The petitioner Archana Saha had been referred to the **Foreigners' Tribunal, No. 1, at Nalbari** for rendering an opinion as to whether she is a foreigner under the Foreigners' Act, 1946 resulting in registration of **F.T. (Nal) Case No. (N) 57/2018**, wherein an opinion dated 21.01.2020 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the Voters' List of 1970 of village Bihpuria Town 4 No. Ward Police Station Bihpuria in the Lakhimpur district, which contains the name of Susil Saha, son of Sitanath at serial no. 398. It is claimed that Susil Saha is the father of the petitioner. To substantiate the same the petitioner relies upon the evidence rendered by

O.P.W.2 Arun Bala Saha, wife of Sushil Kr. Saha of Bihpuria who had deposed that Archana Saha is her daughter. Accordingly, the petitioner claims that the burden under Section 9 of the Foreigners' Act 1946 had been discharged.

4. The question would remain as to whether O.P.W.2 Arun Bala Saha is the wife of Sushil Kr. Saha. To establish the same the petitioner may produce the relevant Voters' List of village Bihpuria which may contain the name of Sushil Kr. Saha and Arun Bala Saha in the same Voters' List. The complete Voters' List of 1970 as well as all the subsequent Voters' List of Bihpuria also be produced before the Tribunal.

5. The evidence of Election Commissioner is found to be irrelevant for the purpose of this writ petition.

6. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, No. 1 at Nalbari to examine the Voters' List of 1970 as well as all the subsequent Voters' List of Bihpuria produced by the petitioner. The respondents in Home Department to make their own verification and submit the report before the Tribunal as well as to cross-examine Arun Bala Saha if so advised.

7. Upon doing the needful the Tribunal may pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 21.01.2020 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 01.09.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant