

GAHC010052072022



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

Case No. : WP(C)/1969/2022

TAHERAN NESSA @ TAHIRAN NESSA
W/O- PARBAT ALI, D/O- LATE AINUDDIN, R/O- VILLAGE MANDILA
PATHAR, P.S- BAGHBAR, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SASTRI BHAWAN, NEW DELHI- 110001.

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

3:THE DEPUTY COMMISSIONER
BARPETA
P.O AND DIST- BARPETA
ASSAM
PIN-781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O AND DIST- BARPETA
ASSAM
PIN-781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

6:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S ROD.
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M

Advocate for the Petitioner : MR N AHMED

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 05.06.2023
(A.M. Bujor Barua, J)

Heard Mr. N. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Taheran Nessa @ Tahiran Nessa was referred to the Foreigners' Tribunal No. 4, Barpeta 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 and accordingly F.T. Case No. FT-623/16 corresponding to F.T. Case No. 160/16 was registered. The Tribunal had rendered its opinion dated 30.12.2020 arriving at its conclusion that the petitioner is a foreigner who had

entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1970 of village Habidongra, Mouza Mandia in the Kamrup district which contains the name of Ainuddin son of Maniruddin at Sl. No. 104 and that of Chajir Nessa wife of Ainuddin at Sl. No. 105 and both are shown to be residing in the same house No. 33. The petitioner also relies upon the voters' list of 1985 of village Habidongra, Mouza Mandia in the Barpeta district which contains the names of Ainuddin son of Maniruddin at Sl. No. 239, Chajiran Nessa wife of Ainuddin Ali at Sl. No. 240 and Habel Uddin son of Ainuddin and all of them are shown to be residing in the same house No. 73. As the names of Ainuddin and Habel Uddin appear in the voters' list of 1985 of village Habidongra, it is claimed that the petitioner could establish that Habel Uddin is the son of Ainuddin and as the name of Ainuddin appears in the voters' list of 1970 of village Habidongra, therefore the citizenship of Habel Uddin has also been established. Habel Uddin rendered evidence before the Tribunal as DW4 wherein in his evidence on affidavit, he stated that he is the brother of the petitioner proceedee Tahiran Nessa and that both he and his sister were born and grew up at village Habi Dongra and that the name of his grandfather is Maniruddin, grandmother is Karpul Bewa, father is Ain Uddin and mother is Chajiran Nessa.

4. If the evidence of Habel Uddin is to be accepted, perhaps the burden under Section 9 of the Foreigners Act, 1946 has been discharged that the petitioner is also an Indian citizen inasmuch as, Habel Uddin deposed that the petitioner Tahiran Nessa is his sister, both being sons and daughters of Ainuddin wherein the name of Ainuddin appears in the voters' list of 1970 of village Habidongra.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 4, Barpeta to examine the aforesaid voters' lists of 1970 and 1985 of village Habidongra. The State respondents in the Home Department may cross-examine the DW4 Habel Uddin to extract the veracity of the evidence rendered by him as well as may make any further verification, if so advised and thereafter submit a report before the Tribunal.

6. Upon doing the needful, the Tribunal to 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 30.12.2020 in F.T. Case No. FT-623/16 corresponding to F.T. Case No. 160/16 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant