

GAHC010052812019



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

Case No. : WP(C)/1699/2019

JULEKHA KHATUN
W/O. MD. BABUL UDDIN AHMED, D/O. JAMAL UDDIN, R/O. UTTAR
SAMORALI, P.S. MURAJHAR, DIST. NAGAON, PIN-782001.

VERSUS

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

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

3:THE DY. COMMISSIONER

HOJAI
ASSAM-782001.

4:THE SUPDT. OF POLICE (B)

HOJAI
ASSAM-782001.

5:ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-01.

6:STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM ACHYUT PLAZA
BHARALUPAR
BHANGAGARH
GUWAHATI-05

Advocate for the Petitioner : MR. A BHATTACHARYA

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

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

ORDER

12.06.2023

(AM Bujor Barua, J)

Heard Ms. K Malakar, learned counsel for the petitioner. Also heard Mr. G Sarma, learned counsel for the respondents in the Home Department of Government of Assam as well as The Superintendant of Police (B) and for the Officer-in-Charge, Dispur Police Station, Ms. L Devi, learned CGC appearing for the respondents in the Union of India. Ms. U Das learned counsel appearing for the Deputy Commissioner, Kamrup, and Mr. AI Ali, learned counsel for the respondents in the Election Commission of India.

2. The petitioner Julekha Khatun had been referred to the Foreigner Tribunal No. 7th, Nagaon (Lanka) for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in the Registration of FT/L Case No. 1459/2017 wherein the Tribunal rendered an opinion dated 12.02.2019 had been 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 1966 of village Bamun Gaon P.S Lanka in the present Hojai District, which contains the name of Jamal Uddin son of Ansir Ali at Sl. No. 468 and that of Siratun Bibi wife of Jamal Uddin at Sl. No. 469, where both are residing in House No. 31 and their respective ages are shown to be 28 years. The voters' list of 1970 also contain the name of Jamal Uddin and Sitarun Bibi. It is claimed that Jamal Uddin of the 1966 voters' list is the father of the petitioner. Further reliance is placed on the voters' list of 1985 of village Bamun Gaon which contain the name of Sitarun Nesa wife of Jamal Uddin at Sl. No. 27 and that of Taz Uddin Laskar son of Jamal at Sl. No. 28 and both are again shown to be residing in the same House No. 7. The voters' list of 1985 of village Bamun Gaon contains the name of Jamal Uddin Laskar son of Kanjid at Sl. No. 85 but the House number is 8. The voters' list of 1989 of village Bamun Gaon contains the name of Taz Uddin son of Jamal at Sl. No. 701 and that of Sitarun Nessa wife of A Hoque at serial No. 705 and both are residing in the same house number of No. 129. The voters' list of 1977 contain the names of Sitarun Nessa wife of Jamal Uddin at Sl. No. 27, Julekha Begum daughter of Jamal at Sl. No. 29 and that of Taj Uddin son of Jamal at Sl. No. 30. It is claimed that as the name of the petitioner Julekha Begum appears along with Taj Uddin and Sitarun Nessa in the voters' list of 1997 whereas the names of Sitarun Nessa and Taj Uddin appear in the voters' list of 1989 and 1985 of village Bamun Gaon and as the name of Sitarun Bibi appears alongwith Jamal Uddin in the voters' list of 1966 and 1971 also village Bamun Gaon, therefore, petitioner had discharged the burden under Section 9 of the Foreigners Act, 1946 that she is a citizen of India.

4. In the circumstance, we remand it back to the Tribunal to examine the complete voters' lists of 1966, 1970, 1985 and 1997 of village Bamun Gaon and

pass a reasoned order. An objection is raised that in the voters' list of 1985 Jamal Uddin is shown to be son of Kanjid whereas in the voters' list of 1966 Jamal Uddin is shown to be son of Ansir Ali and therefore, it is a possibility that there may be two different persons. The respondents in the Home Department also make their own verification and submit a report on the said aspect. The Home Department shall also verify whether Julekha Begum of the 1997 voters' list of village Barmun Gaon and the present petitioner Julekha Begum is one and the same person and after doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.12.2018 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioner shall appear before the concerned Foreigners Tribunal on 15.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.

8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant