

GAHC010056972019



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

Case No. : WP(C)/1800/2019

MALEKA KHATUN
W/O- AFTER ALI, VILL- PAKHIURA, P.S. MORNAI, DIST- GOALPARA,
ASSAM, PIN- 783101

VERSUS

THE UNION OF INDIA AND 5 ORS.
TO BE REP. BY THE SECY., GOVT. OF INDIA, DEPTT. OF HOME AFFAIRS,
NEW DELHI, INDIA-1

2:THE STATE OF ASSAM
TO BE REP. BY THE SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GHY-6

3:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783101

4:THE DY. COMMISSIONER
GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783101

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THHE NRC CO-ORDINATOR

NATIONAL REGISTER OF CITIZEN (NRC)
ASSAM
BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : ASSTT.S.G.I. (R1)

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

ORDER

Date : 08.06.2023

(A.M. Bujor Barua, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 3, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 4, being the Deputy Commissioner, Goalpara and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the Election Commission of India.

2. The petitioner Maleka Khatun was referred to the Foreigners' Tribunal No. 5, Goalpara 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/5/161/MO/17 was registered. The Tribunal had rendered its opinion dated 17.11.2018 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 1966 of

village Bhojmela Pt. I in the Goalpara district which contains the name of Salam Sheikh son of Kasumuddin at Sl. No. 25 and that of Sakina Bibi wife of Salam Sheikh at Sl. No. 26 and both are shown to be residing in the same house No. 8. Similar information is also contained in the voters' list of 1970 of village Bhojmela Pt.I. Sakina Bibi wife of Salam Sheikh had filed an evidence-in-chief as DW4 before the Tribunal stating that she is the mother of the petitioner Maleka Khatun and Maleka Khatun is her daughter who was born and brought up by her at village Bhojmela Pt. I.

4. It is unclear whether DW4 was cross-examined by the respondents in the Home Department although some kind of evidence on oath appears at page 56 of the writ petition. If the evidence of DW4 is to be accepted, the petitioner may have discharged the burden under Section 9 of the Foreigners Act, 1946, inasmuch as, Sakina Bibi wife of Salam Sheikh whose name appears in the voters' list of 1966 of village Bhojmela Pt. I had deposed before the Tribunal that the petitioner Maleka Bibi is her daughter.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 5, Goalpara to examine the aforesaid voters' lists of 1966 and 1970 of village Bhojmela Pt. I as well as the evidence of DW4 and in doing so, if so advised, allow the respondents in the Home Department to cross-examine the DW4. The State respondents in the Home Department through the Superintendent of Police(B), Goalpara may also make their own 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 17.11.2018 in F.T. Case No. FT/5/161/MO/17 and if it is against the petitioner, consequences under law shall follow. The petitioner

to appear before the Tribunal on 13.07.2023. 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