

GAHC010057722021



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

Case No. : WP(C)/2198/2021

FATEMA NESSA
D/O. LT. MONSER ALI, W/O. MUNNAF ALI, VILL. PAKA BETBARI PAM, P.S.
AND DIST. BARPETA, ASSAM, PIN-781301.

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE SUPDT. OF POLICE (B)

BARPETA
P.O.
P.S. AND DIST. BARPETA
ASSAM
PIN-781301.

4:THE DY. COMMISSIONER

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

5:THE STATE COORDINATOR NRC

BHANGAGARH
GUWAHATI-05.

6:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-01

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 : 13.06.2023

(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 5, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 3, being the authorities in the Home Department; Mr. N.K. Das, learned counsel for the respondent No. 4, being the Deputy Commissioner, Barpeta and Mr. T. Pegu, learned counsel for the respondent No. 6, being the Election Commission of India.

2. The petitioner Fatema Nessa was referred to the Foreigners' Tribunal No. 1, Barpeta for rendering an opinion as to whether she is a foreigner within its meaning as per the provisions of the Foreigners Act, 1946 and accordingly F.T. Case No. 959/2015 was registered. The Tribunal had rendered its opinion dated 05.06.2018 arriving at its conclusion that the petitioner is a foreigner as per the provisions of the Foreigners Act, 1946. Being aggrieved this writ petition is

instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Borbala, PS Barpeta in the Kamrup district which contains the names of Munser Ali son of Jonabali at Sl. No. 713 and that of Basatan Nessa wife of Munser Ali at Sl. No. 714 and both are shown to be residing in the same house No. 306. The names of Munser Ali and Basatan Nessa also appear in the voters' list of 1970 of village Borbala. The petitioner thereupon relies upon the voters' list of 1997 of village Borbala, PS Barpeta in the Barpeta district which contains the names of Munser Ali son of Jonab at Sl. No. 1027 and that of Sattar Ali son of Munser at Sl. No. 1029 and both are shown to be residing the same house No. 949. It is claimed that Munser Ali of the voters' lists of 1965, 1970 and 1997 of village Borbala is the father of the petitioner. Sattar Ali son of late Munser Ali had deposed before the Tribunal as DW2 wherein in paragraph 2 of the evidence-in-chief, it is stated as extracted:

“2. That the 2nd party Fateman Nessa is my own elder sister and she born and brought up at Village- Barbala, Mouza- Betbari, now P.S. Howly, District- Barpeta (Assam) and she has been given marriage to one Munnaf Ali S/O Paran Ali, now she has been living at Village- Paka Betbari along with her husband and children.”

4. The deposition of DW2 Sattar Ali is explicit to the extent that Fatema Nessa is his own elder sister and that she was born and brought up at village Borbala and thereafter, she got married to Munnaf Ali son of Paran Ali and since then she has been living at village Paka Betbari. In the cross-examination also, the DW2 Sattar Ali is firm in stating that Fatema Nessa is his elder sister and that presently she is residing at village Paka Betbari along with her husband Munnaf Ali.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 1, Barpeta to examine the aforesaid voters' lists of 1965, 1970 and

1997 of village Borbala, where the voters' list of 1997 contains the names of Munser Ali and Sattar Ali together and the name of Munser Ali also appears in the voters' list of 1965 and 1970 as well as the evidence rendered by DW2 Sattar Ali son of Munser Ali where he is explicit in his deposition that the petitioner Fatema Nessa is his elder sister. The respondents in the Home Department through the Superintendent of Police(B), Barpeta may 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 05.06.2018 in F.T. Case No. 959/2015 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 17.07.2023. 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