

GAHC010058182019



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

Case No. : WP(C)/1852/2019

MAYFUL NESSA
D/O. GOPAL SHEIKH, W/O. LT. AJIMUDDIN, VILL. JANIA, P.S. BARPETA,
DIST. BARPETA, ASSAM.

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

4:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM-781301.

5:THE DY. COMMISSIONER

NAGAON
DIST. BARPETA
ASSAM-781301.

6:THE SUPDT. OF POLICE (B)

BARPETA
ASSAM

Advocate for the Petitioner : MR. R CHETRI

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

23.06.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. R. Chetri, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.4; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.3 and 6; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.2 and Ms. U. Das, learned Addl. Senior Government Advocate, Assam, appearing for respondent No.5.

2. The petitioner Mayful Nessa had been referred to the Foreigners' Tribunal No.1st, Barpeta, for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946 resulting in registration of F.T. Case No.219/2016. The Tribunal rendered an opinion dated 29.11.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1966 of village Baniarpara, Police Station-Barpeta, in the present Barpeta

district, which contains the name of Gopal Sheikh S/o Kukhai Sheikh at Sl.No.337 and it is claimed that Gopal Sheikh is the father of the petitioner. In course of the hearing, the petitioner could not produce any relevant material, which may show that Gopal Sheikh of the 1966 voters list is the father of the petitioner. But however, on the other hand, it is noticed that if the petitioner can establish that she is the daughter of Gopal Sheikh, perhaps the burden under Section 9 of the Foreigners Act, 1946 has been discharged. In the circumstance, by an order of 29.05.2023 we require the Superintendent of Police (Border), Barpeta to make a verification and submit a report before the Court as to whether the petitioner Mayful Nessa is the daughter of Gopal Sheikh of the 1966 voters list of village Baniarpara. A report dated 07.06.2023 has been produced before the Court, which states that Gopal Sheikh S/o Kusai of the 1970 voters list of village Baniarpara, Kamrup, presently the Barpeta district, is the father of the petitioner. Further the Jamabandi of a plot of land at village Salekura shows that Mayful Nessa had inherited the land of Gopal Sheikh, but the land is located at a different village, namely, Salekura which apparently is different from village Baniarpara of the voters list of 1970.

4. As the verification report of the Superintendent of Police (Border) shows that the petitioner Mayful Nessa is the daughter of Gopal Sheikh of the 1970 voters list of village Baniarpara, we remand the matter back to the Tribunal to examine the voters list of 1970. The report submitted by the Superintendent of Police be also made available before the Tribunal for its examination by the Home Department of the Government of Assam. Accordingly, the report produced before the Court is returned back to Mr. G. Sarma, learned special counsel, FT, to enable him to be presented before the Tribunal. The respondents may make any further verification, if so advised and submit report. Upon doing the needful, the Tribunal shall pass a reasoned order. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 29.11.2018 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 28.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.
6. Send back the LCR immediately.
7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant