

GAHC010060002021



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

Case No. : WP(C)/2390/2021

LALBHANU @ NAL BHANU
D/O- LT. MAHIR UDDIN @ MAHAR UDDIN, W/O- SHAHAJ UDDIN, R/O-
VILL- TAPAJULI, P.S. KALGACHIA, DIST.- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

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

3:THE SUPERINTENDENT 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
GHY-5

6:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-

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 : 07.06.2023
(A.M. Bujor Barua, J)

Heard Mr. N. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent 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; Ms. U. Das, learned counsel for the respondent No. 4, being the Deputy Commissioner, Barpeta and Mr. A.I. Ali, learned counsel for the respondent No. 6, being the Election Commission of India.

2. The petitioner Lalbhanu @ Nal Bhanu was referred to the Foreigners' Tribunal No. 5, 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 Case No. FT(5th)395/2015 was registered. The Tribunal had rendered its opinion dated 12.02.2019 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 Garemary, Mouza Ghilajari in the Kamrup district which contains the names of Mahir Uddin son of Mafiz Sarkar at Sl. No. 100, Sahara Khatun wife of

Mahir Uddin at Sl. No. 101 and Rahiman Nessa wife of Mahir at Sl. No. 102 and all of them are shown to be residing in the same house No. 29. It is stated that Mahir Uddin is the father, Sahara Khatun is the stepmother and Rahiman Nessa is the mother of the petitioner. Rahiman Nessa had rendered evidence before the Tribunal as DW3 wherein she stated that the petitioner Lal Bhanu is her daughter.

4. We have noticed that the State respondents in the Home Department had not cross-examined the DW3.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 5, Barpeta to examine the voters' list of 1966 of village Garemarī as well as the evidence of DW3 and in doing so, allow the State respondents in the Home Department to cross-examine the DW3. The State respondents in the Home Department through the Superintendent of Police(B), Barpeta 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 12.02.2019 in Case No. FT(5th)395/2015 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