

GAHC010063442019



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

Case No. : WP(C)/2337/2019

HARIDASHI MONDAL @ BIDESHI MONDAL
W/O. LT. SANTOSH MANDAL, D/O. LT. HARENDRA BEPARI, R/O. VILL.-
BARIPUKHURI PART-II, P.S. ABHAYAPURI, DIST.- BONGAIGAON, ASSAM,
PIN- 783383.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.- 781006.

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005.

5:THE FOREIGNERS TRIBUNAL

BONGAIGAON NO. 2
ABHAYAPURI
P.O. AND P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN- 783383.

6:THE DY. COMMISSIONER
BONGAIGAON
P.O. AND P.S. BONGAIGAON
DIST.- BONGAIGAON
ASSAM
PIN- 783380.

7:THE SUPERINTENDENT OF POLICE (BORDER)
BONGAIGAON
P.O. AND P.S. BONGAIGAON
DIST.- BONGAIGAON
ASSAM
PIN- 783380.

8:THE OFFICER-IN-CHARGE OF ABHAYAPURI POLICE STATION
P.O. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN- 783383

Advocate for the Petitioner : MS. D GHOSH
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

17.05.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. J Payeng, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. PK Medhi, learned

counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioner Haridashi Mondal @ Bideshi Mondal had been referred to the Foreigners Tribunal No. 2, Bongaigaon at Abhyapuri for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of Case No. BNGN/FT-2/APR/73/2016, wherein an opinion dated 17.12.2018 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1966 of village 149 Baripukhuri Part-I, which contains the name of Harendra Bepari son of Late Ramacharan at serial No. 137 and that of Sushila wife of Harendra at serial No. 138. Similarly, the voters list of 1970 of village 149 Baripukhuri Part-I also contains the name of Harendra Bepari son of late Rama Charan at serial No. 170 and Sushila wife of Harendra at serial No. 171. It is claimed that Harendra Bepari of the 1966 voters list of village 149 Baripukhuri Part-I is the father of the petitioner. As the father is no more, the petitioner now refers to the voters list of 1997 of village Baripukhuri, which contains the name of Haren Bepari son of Bama Charan Bepari at serial No. 84 and that of Nagendra Bepari son of Harendra Bepari at serial No. 86 and both of them are shown to be residing in the same house No. 28.

4. Accordingly, the petitioner seeks to establish that Nagendra Bepari is the son of Harendra Bepari of the 1966 voters list of village Baripukhuri Part-I and Nagendra Bepari through his deposition as DW-2 had established that the petitioner is the daughter of Harendra Bepari of the voters list of 1966. But, it is noticed that DW-2 Nagendra Bepari had not been adequately cross-examined by the authorities in the Home Department of the Government of Assam, so as to enable the Tribunal to appreciate the evidence of DW-2 in an appropriate

manner.

5. In view of the above, the matter is remanded back to the Tribunal to enable the Home Department to cross examine the DW-2 Nagendra Bepari son of Harendra Bepari as regards the veracity of the evidence being led that the petitioner Haridashi Mondal @ Bideshi Mondal is the daughter of Harendra Bepari of the 1966 voters list of village Baripukhuri Part-I. The respondents in the Home Department may make their own verification as required under the law. Upon doing the needful, the Tribunal may pass its reasoned order. It is clarified that the maiden name of the petitioner was Haridashi Mondal, but after her marriage, at the instance of the in-laws, the name was changed to Bideshi Mondal. But, be that as it may, the determination be made by the Tribunal as to whether Haridashi Mondal is a citizen of India as referred.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 17.12.2018 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the concerned Foreigners Tribunal on 01.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant