

GAHC010065992023

REPORTABLE



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

Case No. : WP(C)/1927/2023

RAHIMON KHATOON @ RAHIMA KHATUN @ ROHIMON NESSA
W/O- MD. SARBESH ALI SK,
RESIDENT OF VILLAGE DAKAIDAL,
P/S- MORNOL,
DIST.- GOALPARA (ASSAM).

VERSUS

UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS,
SHASTRI BHAWAN, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI-06.

3:THE DEPUTY COMMISSIONER
GOALPARA
P.O. AND DIST.- GOALPARA (ASSAM).

4:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
P.O. AND DIST.- GOALPARA (ASSAM).

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI.

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)

ASSAM.

7:THE MEMBER FOREGINERS TRIBUNAL 4TH
GOALPARA
ASSAM

Advocate for the Petitioner : MR F Z MAZUMDER

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

Date : 31-07-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. FZ Mazumdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. A Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Goalpara and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Goalpara.

2. The petitioner, namely, Rahimon Khatoon @ Rahima Khatun @ Rohimon Nessa was referred to the Foreigners Tribunal 4th Goalpara Assam for rendering an opinion as to whether she is a foreigner within the meaning of Foreigner Act, 1946 which resulted in the registration of F.T.Case No.FT(G-4)M/460/18 arising out of Ref. FT Case No.623/08 wherein an opinion dated 30.12.2022 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Birsing Helengachar Pt-I, P.S. Uttar Salmara, in the present Bongaigaon district which contains the name of Abdul Rahman son of Bilat Ali at Sl.No.309. It is claimed that Abdul Rahman is the father of the petitioner. Reliance is also placed upon the voters list of 2011 of village Birsing Helengachar, which contains the name of Abdur Rohman son of Belat Ali at Sl.No.216 and that of Nazmul Hoque son of A Rahman at Sl.No.219, where both are shown to be residing in the same House No.65. It is claimed that Abdul Rahman of the 1966 voters list of village Birsing Helengachar Pt-I and Abdur Rohman of the 2011 voters list of village Birsing Helengachar are one and the same person. Accordingly, it is claimed that Nazmul Hoque, son of A Rahman is the son of Abdur Rahman of the 1966 voters list. Nazmul Hoque son of Abdur Rahman rendered evidence before the Tribunal as DW-3, wherein he had deposed that Rahima Khatun @ Rohimon Nessa is his elder sister and that she is about 17 years elder to the DW-3. Accordingly it is sought to be established that Rahima

Khatun @ Rohimon Nessa is the daughter of Abdur Rahman of the 1966 and 2011 voters list of village Birsing Helengachar. But while going through the evidence of DW-3, it is noticed that firstly the form of recording deposition itself is defective, *inasmuch as*, the resident of the person who is deposing before the Tribunal is not provided for in the form, nor it is stated in the evidence.

5. In the circumstance, the matter stands remanded back to the Tribunal to enable the Tribunal to re-examine Nazmul Hoque the DW-3 by recording as to what is his place of residence. The Tribunal to also undertake an exercise to find out as to whether Nazmul Hoque son of A Rahman of the 2011 voters list of village Birsing Helengachar and the DW-3 Nazmul Hoque are one and the same person.

6. The petitioner further relies upon a certificate issued by the Secretary Khankhowa Gaon Panchayat which contains the information that Rohima Khatun is the daughter of Lt. Abdur Rahman of village Birsing Helengachar. We are unable to accept the said certificate, *inasmuch as*, the certificate seeks to establish a relationship that Rahima Khatun is the daughter of Abdur Rahman of village Birsing Helenga Part II. The relevant provision providing for establishing a relationship is laid down under Section 50 of the Evidence Act which requires that the person who seeks to establish a relationship has special means of knowledge about the existence of the fact. No such material is produced before the Court that the Secretary of the Gaon Panchayat Sabyasachi Chowdhury had any special means of knowledge regarding the relationship that Rohima Khatun is the daughter of Abdur Rahman. In view of the non-compliance of the provisions of Section 50 of the Evidence Act, the certificate issued by the Gaon

Panchayat concerned is of no evidentiary value,.

7. The petitioner to produce the complete voters lists from the years 1966 up to 2011 of village Birsing Helengachar for examination of the Tribunal. The petitioner is also at liberty to produce further evidence to establish her case, if so advised.

8. The respondents in the Home Department may also make their own verification on the authenticity of the voters lists relied upon by the petitioner and submit a report before the Tribunal, if so advised.

9. Accordingly, the petitioner shall appear before the Tribunal on 07.09.2023.

10. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 30.12.2022 of the Foreigners Tribunal 4th Goalpara Assam in F.T.Case No.FT(G-4)M/460/18 arising out of Ref. FT Case No.623/08 and if it is against the petitioner, consequential action under the law shall follow.

11. Till the reasoned order is passed, no coercive action be taken against the petitioner.

12. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant