

GAHC010066202021



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

Case No. : WP(C)/2519/2021

AIMANA BEGUM

W/O- AKTAR HUSSIN KHAN @ AKTAR HUSSAIN, D/O- LT. ABDUL AZIZ
MIYA @ A. AZIZ MIYA @ AZIZ MIYA, R/O- VILL- PUB ALADI, P.S.
SARTHEBARI, DIST.- BARPETA, ASSAM

VERSUS

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

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

3:THE DY. COMMISSIONER
BARPETA
P.O. AND DIST.- BARPETA
ASSAM
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND DIST.- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE COORDIATOR OF NRC

ASSAM
BHANGAGARH
GHY-

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

14.06.2023

(AM Bujor Barua, J)

Heard Mr. N Ahmed, learned counsel for the petitioner. Also heard Mr. G Sarma, learned counsel for the respondents in the Home Department of Government of Assam as well as the The Superintendant of Police (B) Barpeta, P.O & District Barpeta, Assam, Ms. L Devi, learned CGC appearing for the respondents in the Union of India, Ms. K Phukan learned counsel appearing for the Deputy Commissioner, Barpeta and Mr. AI Ali, learned counsel for the respondents in the Election Commission of India.

2. The petitioner Aimana Begum had been referred to the Foreigners' Tribunal No. 3 for rendering an opinion as to whether he is a foreigner within a meaning of Foreigners' Act, 1946, resulting in the registration of FT Case No. 796(III) of 2013, wherein the Tribunal rendered an opinion dated 30.05.2020 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1970 of

village Pub Aladi P.S Barpeta in the present Barpeta district, which contains the name of Aziz Miya son of Monser at Sl. No. 13 and that of Naziran Nessa wife of Aziz at Sl. No. 15. It is claimed that Aziz Miya is the father and Naziran Nessa is the mother of the petitioner. Further reliance is placed on the voters' list of 1997 of village Pub Aladi, which contains the name of Aimana Begum wife of Aktar at Sl. No. 843 and that of Nazira Nessa wife of Aziz at Sl. No. 844 where both are residing in the same house i.e, H/No. 13. It is claimed that Aimana Begum is the petitioner herself. It is further claimed that as the name of Aimana Begum and Nazira Nessa appear together in the voters' list of 1997 whereas Nazira Nessa appears along with Aziz Miya in the voters' list of 1971 of village Pub Aladi, the petitioner has discharged the burden under Section 9 of the Foreigners' Act, 1946.

4. Mr. G Sarma learned counsel for the respondents raised an objection by pointing out that the name of Aziz Miya did not occur in any voters' list prior to 1970 and considering that was 45 years as on 1970, his name ought to have existed in some prior voters' list.

5. In view of above, we remand it back to the Tribunal to examine the voters' list of 1970, 1997 and 2005 where the voters' list of 1970 contains the name of Aziz Miya and Naziran Nessa together and the voters' list of 1997 and 2005, all of the same village Pub Aladi, contains the name of Naziran Nessa and Aimana Begum together where they are residing in the same house.

6. The respondents in the Home Department to also make their own verification and submit a report before the Tribunal as to why the name of Aziz Miya did not appear in any prior voters' list and if the report is of any relevance,

the Tribunal shall take for consideration by passing of the any order. The Tribunal to also examine as to whether the petitioner Aimana Begum of the voters' list of 1997 and 2005 of village Pub Alabi are one and the same person. Upon doing the needful, the Tribunal may pass a reasoned order thereon.

7. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.12.2018 and if it goes against the petitioner, consequence as per law shall follow.

9. The petitioner shall appear before the concerned Foreigners Tribunal on 18.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

10. The writ petition is allowed as indicated above.

11. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant