

GAHC010070602023



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

Case No. : WP(C)/1926/2023

MUSSTT AKHIYA KHATUN @ AKHIRAN NESSA
W/O- ABUL KASEM @ ABDUL KASHEM, D/O- AJIJAR RAHMAN @ AJIJAR
RAHMAN MOLLAH, R/O- BALADMARI (PUB MORIOM NAGAR), P.S. AND
DIST.- GOALPARA, ASSAM, PIN- 783121

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-1

2:THE ELECTION COMMISISON OF INDIA
NEW DELHI-1

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

4:THE STATE CO-ORDINATOR OF NRC
BHANGAGARH
ASSAM
GUWAHATI-05

5:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM
PIN- 783121

6:THE SUPERINTENDENT OF POLICE (B)
GOALPARA

ASSAM
PIN- 783101

7:THE OFFICER-IN-CHARGE
GOALPARA POLICE STATION
DIST.- GOALPARA
ASSAM
PIN- 78310

Advocate for the Petitioner : MR. M U MAHMUD

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

BEFORE

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

O R D E R

21.07.2023

(A.M. Bujor Barua, J)

Heard Mr. MU Mahmud, 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. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Goalpara.

2. The petitioner Musstt. Akhiya Khatun @ Akhiran Nessa had been referred to the Foreigners Tribunal No. 1, Goalpara for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No. 8610/G/2016, wherein an opinion dated 24.02.2023 was rendered 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 1966 of village Rowmari, police station-Lakhipur in the Goalpara district, which contains the name of Ajijar Rahman son of Ahammad Ali at serial No. 399 and that of Hanjela Khatun wife of Ajijar Rahman at serial No. 400 and it is claimed that Ajijar Rahman is the father and Hanjela Khatun is the mother of the petitioner. Reliance is also placed on the voters list of 1989 of village Rowmari, which contains the name of Ajijar Rahman son of Ahammad Ali at serial No. 832, Hamida Khatun wife of Ajijar Rahman at serial No. 533 and that of Jelala Hussain son of Ajijar Rahman at serial No. 534. It is claimed that Jelala Hussain is the brother of the petitioner. Jelala Hussain had rendered evidence before the Tribunal as DW-2 stating that the petitioner Akhiya Khatun is his sister who is also the daughter of Ajijar Rahman of the voters list of 1966 of village Rowmari.

4. If the evidence rendered by DW-2 is to be accepted reading conjointly with the voters list of 1989 as well as the 1966 voters list of village Rowmari, the petitioner may have discharged the burden under section 9 of the Foreigners Act, 1946 that she is not a foreigner.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1966 as well as 1999 of village Rowmari and the evidence rendered by DW-2. In doing so, the respondents in the Home Department may appropriately cross examine the DW-2 as may be advised and may also make their own verification and submit a report before the Tribunal. The petitioner shall produce the complete voters list of village Rowmari from the years 1966 onwards before the Tribunal for its examination. After doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 24.02.2023 and if it goes against the petitioner,

consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 16.08.2023. 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