

GAHC010074112019



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

Case No. : WP(C)/2275/2019

SUKURJAN NESSA @ SUKUR BEGUM @ SUKURJAN BEGUM
W/O- EYAKUB ALI, D/O- HANIF ALI, R/O- VILL- KAPOHA, P.S. BARPETA,
DIST- BARPETA, ASSAM, PIN- 781301

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

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

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
GHY
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL NO. 1ST
BARPETA
ASSAM
DIST- BARPETA
ASSAM
PIN- 781301

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

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

8:THE OFFICER-IN-CHARGE
BARPETA P.S.
P.O. BARPETA
DIST- BARPETA
ASSAM
PIN- 78130

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

02.03.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner, Ms. L Devi, learned counsel for the respondents in the Union of India as well as the authorities in

the NRC, Ms. A Verma, learned counsel for the respondents in the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the respondents in the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Sukurjan Nesa @ Sukur Begum @ Sukurjan Begum was referred to the Foreigners Tribunal No. 1, Barpeta for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971 resulting in registration of F.T. Case No. 222/2016 [corresponding to IM(D)T Case No. 7181(A)/1998]. By the order dated 11.02.2019, the Foreigners Tribunal gave an opinion that the petitioner is a foreign citizen who entered the State of Assam subsequent to 25.03.1971. Being aggrieved, this writ petition is instituted.

3. The petitioner relies upon the voters list of 1970 of village Chapra, police station-Barpeta, which contains the name of Hanif Ali, son of Habej at serial No. 552 and Jayeda Khatun, wife of Hanif at serial No. 553. The petitioner claims that Hanif Ali is her father and Jayeda Khatun is her mother. Jayeda Khatun had deposed before the Tribunal as DW-3 and in her deposition has stated that the proceedee Sukurjan Nessa is her own daughter and she was born in village Gagolmari and later on, she was married to Eyakub Ali of village Kapoha.

4. If the aforesaid two materials on record are acceptable in law, a prima-facie case appears to have been made out by the petitioner that she is not a person who entered the State of Assam subsequent to 25.03.1971. The petitioner also relies upon the voters list of 1966 of village Gagolmari, which contains the name of Habej Ali son of Matbor and Jaygon Nessa wife of Habej, whom the petitioner claims to be her grandfather and grandmother.

5. Considering the aforesaid aspects, we remand the matter back to the Tribunal for passing a reasoned order by examining whether the voters list of 1970 of village Chapra and the evidence of DW-3 Jayeda Khatun leads to a conclusion as to whether the petitioner is a person who had not entered the State of Assam subsequent to 25.03.1971. Before the Tribunal, the petitioner may also produce the complete the voters list of 1966 of village Gagolmari to indicate as to whether the name of Hanif Ali appears along with his other family members i.e. his father Habej Ali and others. The continuous voters list of the aforesaid village may also be produced so that the appropriate conclusion can be arrived at.

6. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion rendered by the Foreigners Tribunal No. 1, Barpeta dated 11.02.2019 in FT Case No. 222/2016. If the reasoned order to be passed is against the petitioner, the consequence as per law shall follow.

7. The petitioner shall appear before the Foreigners Tribunal No. 1, Barpeta on 10.04.2023. Till such reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed to the extent as indicated above.

Sent back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant