

GAHC010074782023



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

Case No. : WP(C)/2269/2023

DULJAN BIBI @ DELJAN NESSA
D/O LATE WAHED ALI @ WOHEH ALI SK @ AHED ALI, W/O ABDUL HAMID
MIR, R/O VILL-TELTARI, P.S.-SOUTH SALMARA, DIST-SOUTH SALMARA
MANKACHAR, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW DELHI-110001

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED 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 DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

6:THE DEPUTY COMMISSIONER
DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

7:THE SUPERINTENDENT OF POLICE (BORDER)
DHUBRI
DIST-DHUBRI
ASSAM
PIN-783301

8:THE OFFICER-IN-CHARGE OF SOUTH SALMARA POLICE STATION
DIST-SOUTH SALMARA MANKACHAR
ASSAM
PIN-78313

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 12.06.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 7 and 8 being the authorities under the Home

Department of Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 3 being the Election Commission of India and Ms. U Das, learned counsel for the respondents no. 5 and 6 being the Deputy Commissioner, South Salmara Mankachar and Deputy Commissioner, Dhubri respectively.

2. The petitioner Duljan Bibi @ Deljan Nessa was referred to the Foreigners' Tribunal No. 2, Dhubri for rendering an opinion as to whether she is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of F.T. Case No. 375/S/16. The Tribunal rendered an opinion dated 13.05.2022 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Basirchar Police Station South Salmara in the present South Salmara Mankachar district which contains the name of Ahadali Sheikh, S/O Nila Sheikh at Sl. No. 108. The voters' list of 1970 of village Basirchar is also relied upon which contains the names of Ahadali Sheikh, S/O Nila Sheikh at Sl. No. 97 and that of Bibijan Bibi, W/O Ahad at Sl. No. 98 and both are shown to be residing in the same house no. 31. It is stated that Ahadali Sheikh is the father of the petitioner and Bibjan Bibi is the mother of the petitioner. To substantiate the same reliance is placed upon a birth certificate bearing registration no. 190/79 dated 19/10/79 which contains the information that the certificate was issued in the name of Deljan Nessa daughter of Wahed Ali of Basirchar village.

5. If the information contained in the birth certificate is valid and acceptable, the petitioner may have discharged the burden that she is the daughter of Wahed Ali and as Ahadali's name appear in the voters' list of 1966 and 1970 of

village Basirchar the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946 that she is a citizen. Further references are made to the voters' list of 1985 onwards of village Teltari wherein in the voters' lists of 2013, 2015 and 2019 the name of Deljan Nessa appears along with that of Bibijan Bewa, wife of Ahad Ali but the voters' lists of 1985 onwards are of a different village namely Teltari. Although it is sought to be explained that the family of Ahadali had shifted from village Basirchar to village Teltari but the same may not be necessary for arriving at the conclusion on the citizenship of the petitioner if in the event reliance can be placed on the birth certificate dated 19.10.1979 as indicated above.

6. For the purpose, we remand the matter back to the Tribunal to examine the voters' lists of 1966 and 1970 of village Basirchar which contains the name of Ahadali in the voters' list of 1966 as well as Ahadali and Bibijan Bibi together in the voters' list of 1970 of village Basirchar which prima facie shows that Ahadali himself is a citizen as well as the information contained in the birth certificate that Deljan Nessa is the daughter of Wahed Ali of village Basirchar.

7. We have taken note that as per the judgment rendered in *Rupa Das @ Rupa Bati Sarkar v. Union of India and others reported in 2019 (5) GLT 575* if the procedure under Section 76 of the Evidence Act, 1872 had been followed in issuing the birth certificate the same would be admissible in evidence. Accordingly, the respondents in the Home Department may examine as to whether the provisions of the Section 76 had been followed while issuing the birth certificate referred above and also whether the same birth certificate is otherwise a valid and acceptable birth certificate and thereafter, submit a report. The Home Department to also verify as to whether Ahadali of the voters' list of 1966 and 1970 of village Basirchar and Wahed Ali of the birth certificate are one

and same person. In the event, for any reason a conclusion would be arrived that the birth certificate is either inadmissible or it is not valid for any other aspect, the petitioner would be given the opportunity of bringing further material to show that the family of Wahed Ali had shifted from village Basirchar to village Teltari in the year 1977 so as to enable the names to appear in the voters' list of village Teltari from 1985 onwards. Upon doing the needful, the Tribunal to pass a reasoned order.

8. The petitioner to appear before the Tribunal on 15.07.2023.

9. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 13.05.2022 passed in Case No. F.T. Case No. 375/S/16 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant