

GAHC010078032020



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

Case No. : WP(C)/2354/2020

MINATI DAS
D/O- GAWRALAL BARMAN, W/O- SRI SUNIL DAS, R/O- VILL- (KHA)
ERAGAON, P.S. GINGIA, DIST.- BISWANATH, ASSAM, PIN- 784184

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-06

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 DY. COMMISSIONER

BISWANATH
ASSAM
PIN- 784176

6:THE FOREIGNERS TRIBUNAL
TEZPUR 5TH AT BISWANATH CHARIALI
DIST.- BISWANATH
ASSAM
PIN- 784176

7:THE SUPERINTENDENT OF POLICE (B)
BISWANATH
DIST.- BISWANATH
ASSAM
PIN- 784176

8:THE OFFICER-IN-CHARGE
OF GINGIA P.S.
P.O. GINGIA
DIST.- BISWANATH
ASSAM
PIN- 78418

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

08.05.2023

(A.M. Bujor Barua, J)

Heard Ms. H Betala, 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. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Sonitpur at Tezpur.

2. The petitioner Minati Das had been referred to the Foreigners Tribunal No. 5, Biswanath Chariali, Sonitpur for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of Case No. BNC/D/996/2016, wherein an opinion dated 01.11.2019 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1971 of village Botiaruka under Sootea police station, Mauza Nag Shankar in the Sonitpur district, which contains the name of Gurlal Barman son of Trailokya at serial No. 206. The petitioner also relies upon the evidence of DW-2 Puneswar Saikia, who is aged about 69 years and also the Gaon Bura of Niz Nag Shankar Lat. DW-2 stated that he is the Government Gaon Bura of Niz Nag Shankar lat and had also temporarily acted as the Gaon Bura of Botiaruka Lat and as per his introduction, DW-2 seems to be a resident of Nag Shankar. No explanation is forthcoming from the DW-2 as to whether the village Botiaruka is a part of Niz Nag Shankar Lat except for his statement in cross examination that the distance between the house of the petitioner and that of his is about 1 ½ KM. But the DW-2 in his evidence in chief is very categorical that he knows the petitioner proceedee since her childhood and therefore, he had issued the certificate. It is to be noted that the respondents in the Home Department of the Government of Assam in the cross examination had made up to fill the gaps of whatever lacuna was there in the evidence of DW-2 rather than seriously cross-examining the DW-2 on the veracity of the evidence that he may have rendered.

4. In the circumstance, Mr. G Sarma, learned counsel for the respondents in the Home Department prays that the mater be remanded back to the Tribunal to enable the Home Department of the Government of Assam to cross examine

the DW-2 on the veracity of the statement he had made that he knows the petitioner from her childhood and therefore had given the certificate and that the petitioner is the daughter of Gourlal Barman of village Botiaruka who had died much earlier.

5. In view of the above, the matter is remanded back to the Tribunal to enable the respondents in the Home Department to cross examine the DW-2 regarding his deposition rendered in examination in chief, if so advised. The State authorities through the Home Department may also make any other verification that they are required to be done under the law and submit a report before the Tribunal. The petitioner may also produce any further evidence as may be advised to establish that the petitioner Mitali Das is the daughter of Gourlal Barman, whose name appears in the voters list of 1971 of village Botiaruka. Upon doing the needful, the Tribunal may pass its reasoned order.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 01.11.2019 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the concerned Foreigners Tribunal on 19.06.2023. 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