

GAHC010080332020



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

Case No. : WP(C)/3737/2020

SMTI. TEJAL HAJONG
D/O- LT. CONGRESS HAJONG, W/O- SRI KETURAM HAJONG, VILL.- NO. 5,
KATORI CHAPORI HAJONG, P.S.- BOGINADI, P.O.- PATHALIPAM, DIST.-
LAKHIMPUR, ASSAM, PIN- 787056.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REPRESENTED BY THE SECRETARY, HOME AFFAIRS, NEW DELHI- 1.

2:THE CHIEF ELECTION COMMISSIONER
ELECTION COMMISSION OF INDIA
ASHOKA ROAD
NEW DELHI- 110001.

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

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007.

5:THE DY. COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM.

6:THE ELECTORAL REGISTRATION OFFICER
112 DHAKUAKHANA (ST) LEGISLATIVE ASSEMBLY CONSTITUENCY
DHAKUAKHANA
LAKHIMPUR
ASSAM.

7:THE STATE COORDINATOR OF NATIONAL REGISTRAR OF CITIZENS
ASSAM
BHANGAGARH
G.S. ROAD
GUWAHATI
ASSAM.

8:THE SUPERINTENDENT OF POLICE (BORDER)
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR. J C GOGOI

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 26.05.2023

(A.M. Bujor Barua, J)

Heard Mr. B. Islam, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 7, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. A.I. Ali, learned counsel for the respondent No. 2 and 6, being the authorities in the Election Commission of India; Mr. J. Payeng, learned counsel for the respondents No. 3, 4 and 8, being the authorities in the Home Department and Ms. K. Phukan, learned counsel for the respondent No. 5, being the Deputy Commissioner, Lakhimpur, North Lakhimpur.

2. The petitioner Smti. Tejal Hajong was referred to the Foreigners' Tribunal No. 2, Lakhimpur for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly LFT-II (D) Case No. 1229/08 was registered. The Tribunal had rendered its opinion dated 27.09.2011 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971 which is stated to be an ex-parte order. Being aggrieved WP(C) No. 178/2019 was instituted which was given a final consideration by the order dated 25.01.2019 giving the petitioner another opportunity to prove her case on merit before the Tribunal by setting aside the ex-parte order dated 27.09.2011.

3. After re-appearing before the Tribunal, the petitioner relies upon the voters' list of 1966 of village Bormatia in the present South Salmara, Mankachar district which contains the name of Kongress Hajong son of Ananta Kumar at Sl. No. 15. It is claimed that Kongress Hajong is the father of the petitioner. To substantiate the same, the petitioner relies upon a school certificate issued by the Headmaster of Kasinath Sarboday M.E. School in the Dhemaji district which contains the information that Tijalata Hajong is the daughter of Kongress Hajong of village Harinathpur. The petitioner also relies upon some other certificates issued by the Gaon Panchayat Secretary as well as the Gaonburah. By relying on the certificates, the petitioner makes a claim that she has discharged the burden that she is the daughter of Kongress Hajong whose name appears in the voters' list of 1966 of village Bormatia in the present South Salmara, Mankachar district.

4. Firstly, it is noticed that the certificates that contains the information that Kongress Hajong is a resident of village Harinathpur in the Dhemaji district whereas the voters' list of 1966 relied upon is of village Bormatia in the present

South Salmara, Mankachar district. We have also noticed that the authors of the certificates relied upon had not been examined by the petitioner.

5. The law in respect of placing reliance upon a school certificate in a Foreigners' Tribunal matter had been settled by the Hon'ble Supreme Court in the case of *Rupa Das Vs. Union of India & Ors.*, reported in *2019 SCC OnLine Gau 5663* wherein it had been laid down that the school certificate has to be supported by the evidence of the Headmaster of the school along with the original school admission register and other school records to substantiate the contents therein.

6. As the law is implicit and clear but the petitioner had not followed, it had been replied on a query being made that the petitioner was misguided. A mere statement that the petitioner was misguided cannot be a reason as to why the petitioner will not follow the law and do the needful to prove the certificates.

7. In the circumstance for the interest of justice, we give another opportunity to the petitioner to examine the authors of the respective certificates by producing them before the Tribunal. But as the petitioner had not utilized the earlier opportunity given, more so in a situation when the original order was an ex-parte order and taking a sympathetic consideration the petitioner was given opportunity to prove her case before the Tribunal and on the second opportunity also the petitioner had not accepted the opportunity in the true earnest, the petitioner to pay a cost of Rs. 5,000/- before the District Legal Services Authority, Lakhimpur. Upon showing the proof of payment of the cost, the petitioner to appear before the Tribunal on 01.07.2023.

8. The Tribunal to also take note that the voters' list of 1966 relied upon by the petitioner to show that Kongress Hajong is an Indian citizen is of village Bormatia in the present South Salmara, Mankachar district whereas the school

certificate shows Kongress Hajong to be an inhabitant of village Harinathpur in the Dhemaji district. The petitioner to also give an adequate explanation with supporting materials and documents that Kongress Hajong of the voters' list of 1966 of village Bormatia and Kongress Hajong of the school certificate of village Harinathpur are one and the same person. The petitioner may produce any further relevant material, if so advised.

9. Upon doing the needful, the Tribunal to pass a reasoned order. As it is a matter which is more than a decade old, the Tribunal is requested to pass the reasoned within a period of three months from today and the petitioner is also put on strict notice that this is the third opportunity given to the petitioner and the same be accepted by doing the needful, under the law. The State respondents in the Home Department through the Superintendent of Police(B), Lakhimpur to also make a verification as to whether Kongress Hajong of the voters' list of 1966 of village Bormatia and Kongress Hajong of the school certificate are one and the same person and thereafter submit the report before the Tribunal.

Writ petition stands disposed of as indicated above.

J U D G E

J U D G E

Comparing Assistant