

GAHC010091072022



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

Case No. : WP(C)/3394/2022

HALIMA KHATUN @ MUSSTT. HALIMA BEGUM
D/O- HANIF MOLLA @ HANIF ALI MOLLA @ HANIF ALI
W/O- SOMER ALI
R/O- VILLAGE BOTIAMARI
P.S- BOKO
DIST- KAMRUP, ASSAM

VERSUS

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

2: THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3: THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4: THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
1ST FLOOR
AVCHYUT PLAZA
G.S ROAD
ASSAM
BHANGAGARH

GUWAHATI-05
DIST- KAMRUP (M)

5:THE FOREIGNERS TRIBUNAL
NO.2
KAMRUP
BOKO
ASSAM
DIST- KAMRUP
PIN-781123

6:THE DEPUTY COMMISSIONER
KAMRUP
P.O- AMINGAON

DIST- KAMRUP
ASSAM
PIN-781031

7:THE SUPERINTENDENT OF POLICE (B)
KAMRUP

P.O- AMINGAON
DIST- KAMRUP
ASSAM
PIN-781031

8:THE OFFICER IN CHARGE
OF BOKO POLICE STATION
P.O- CHHAYGAON
DIST- KAMRUP
ASSAM
PIN-78112

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 28.07.2023

(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 6, being the Deputy Commissioner, Kamrup, Amingaon.

2. The petitioner Halima Khatun @ Musstt. Halima Begum was referred to the Foreigners' Tribunal No. 2, Kamrup(Rural) at Boko for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946 and accordingly B.F.T. Case No. 1318/2016 was registered. The Tribunal had rendered its opinion dated 10.10.2019 by arriving at its conclusion that the petitioner is a foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1970 of village Choudhurypara, PS Boko in the Kamrup district which contains the name of Hanif Malla son of Gosai at Sl. No. 180. It is claimed that Hanif Malla is the father of the petitioner. To substantiate the same, reliance is placed on the evidence rendered by DW3 Abul Molla son of Atowar Molla, who had stated in paragraph 4 of his evidence-on-affidavit that Abbas Ali is his great grandfather having four sons namely, Gosai Molla, Soban Molla, Sokman Molla and Kolimuddin Molla. Gosai Molla who is also known as Haji Gosai Molla had two

wives namely, Matabon Nessa and Moiful Bibi and Matabon Nessa had eight children namely, Atowar Molla, Somed Ali Molla, Arshed Ali Molla, Hanif Ali Molla, Gul Meher, Ful Meher, Suk Meher and Mul Meher. Abul Molla claims to be the son of Atowar Molla whereas the petitioner Halima Khatun is the daughter of Hanif Molla and therefore, Abul Molla has the special means of knowledge to discharge the burden under Section 50 of the Indian Evidence Act, 1872 to establish that Halima Khatun is the daughter of Hanif Ali Molla. Evidence rendered by Asrab Ali Molla son of Hanif Ali Molla as DW4 is also relied upon by the petitioner who had deposed that Hanifa Begum is the daughter of Hanif Ali Molla.

4. Ms. A. Verma, learned counsel for the respondents in the Home Department raises an objection that although the names of Asrab Ali Molla and Hanif Ali Molla appear in the voters' list of 2005 of village Choudhurypara, but the in between voters' lists are incomplete.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Kamrup(Rural) at Boko to examine the aforesaid voters' list of 1970 of village Choudhurypara as well as all the subsequent voters' lists of village Choudhurypara up to the year 2005 to cross check the evidence rendered by DW3 and DW4 regarding the family tree of the petitioner. The DW3 and DW4 to also produce their Aadhaar Card in original before the Tribunal to establish that person appearing before the Tribunal are in fact the DW3 and DW4, respectively. The State respondents in the Home Department make their own verification, if so advised and thereafter submit a report before the Tribunal.

6. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail

over the earlier opinion dated 10.10.2019 in B.F.T. Case No. 1318/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 25.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant