

GAHC010096562019



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

Case No. : WP(C)/2894/2019

MOJIDA KHATUN
W/O. ABDUL MALEK AND MALEK ALI, R/O. VILL. NANGALDHOWA, P.S.
RUPOHIHAT, DIST. NAGAON, ASSAM.

VERSUS

UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE DY. COMMISSIONER

NAGAON
PIN-782001.

4:THE SUPDT. OF POLICE (B)
NAGAON
PIN-782001.

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001.

6:THE STATE COORDINATOR

NATIONAL REGISTRAR OF CITIZENS (NRC)
ASSAM

GUWAHATI-781005

Advocate for the Petitioner : ALHAJJ INAM UDDIN

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

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

ORDER

Date : 21.06.2023

(A.M. Bujor Barua, J)

Heard Mr. A.I. Uddin, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. M. Dutta, learned counsel for the respondent No. 3, being the Deputy Commissioner, Nagaon and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Mojida Khatun was referred to the Foreigners' Tribunal No. 3, Nagaon for rendering an opinion as to whether she is a foreigner within the meaning of the Foreigners Act, 1946 and accordingly F.T. Case No. NFT.(No.3) (D)418/2016 was registered. The Tribunal had rendered its opinion dated 11.03.2019 arriving at its conclusion that the petitioner is a foreigner within the meaning of the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Kasokhaiti, Mouza Laokhowa in the Nagaon district which contains the name of Halemuddin son of Jamiratddin at Sl. No. 268. It is claimed that

Halemuddin is the elder brother of the father of the petitioner. The petitioner also relies upon the voters' list of 1971 of village Kasokhaiti, Mouza Laokhowa in the Nagaon district which contains the names of Md. Amjat Ali son of Jamiratuddin at Sl. No. 707 and Musstt. Aytan Nessa wife of Amjat at Sl. No. 708 and both are shown to be residing in the same house No. 109. It is claimed that Md. Amjat Ali is the father of the petitioner. To substantiate the same, reliance is placed on a Jamabandi of a plot of land at village Kasokhaiti which contains the information that by an order of the Circle Officer dated 04.08.2017 in Mutation Case No. NAG/SAMK/2017-18/44/FUMT, the name of, amongst others, Majida Khatun daughter of late Amjat had been mutated in place of Amjat and accordingly her name had been entered in the Jamabandi by deleting the name of Amjat. Accordingly, it is claimed that the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 3, Nagaon to examine the aforesaid voters' lists of 1965 and 1971 of village Kasokhaiti, Mouza Laokhowa in the Nagaon district as well as the Jamabandi which has been relied upon. The petitioner to produce the complete order of the Circle Officer dated 04.08.2017 for examination of the Tribunal. The State respondents in the Home Department may make their own verification on the authenticity and acceptability of the aforesaid voters' lists as well as the Jamabandi. The State respondents in the Home Department may also make their own verification as to whether Mojida Khatun at Sl. No. 33 of the Jamabandi and the writ petitioner Mojida Khatun are one and the same person and thereafter submit a report before the Tribunal.

5. 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 11.03.2019 in F.T. Case No. NFT.(No.3) (D)418/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 26.07.2023. 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