

GAHC010098832023



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

Case No. : WP(C)/2605/2023

NOBIRON NESSA
W/O- TARA MIYA @ TARA MIYAN
D/O- LATE ALIMUDDIN @ ALIMUDDIN MIYAN,
PERMANENT RESIDENT OF VILL- CHAUTARA,
P.S.- CHAYGAON, PIN- 781137,
DIST- KAMRUP, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NEW DELHI. PIN- 110001.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER

NEW DELHI- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

HOME DEPARTMENT

DISPUR
GUWAHATI- 781006.

4:THE DEPUTY COMMISSIONER
KAMRUP
PIN- 781031

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP
781031
ASSAM.

6:COORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR A W AMAN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 28-06-2023
(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 6 being the authorities under the Union of India and NRC respectively, Mr. AI Ali, learned counsel for the respondent no. 2 being the authorities under the Election Commission of India, Mr. J Payeng, learned counsel for the respondent no. 3 being the authorities under the Home Department of the Government of Assam and Ms. U Das, learned counsel for the respondent no. 4 being the Deputy Commissioner, Kamrup.

2. The petitioner Nobiron Nessa had been referred to the Foreigners' Tribunal No. 1, Kamrup(R) for rendering an opinion as to whether she is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of GFT (R) Case No. 1415/2017. The Tribunal rendered an opinion dated 23.10.2018

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 Monjuri Police Station Chaygaon in the Kamrup district which contains the name of Alimuddin Miya S/O Kanu at Sl. No. 27 and it is claimed that Alimuddin Miya is the father of the petitioner. The name of Alimuddin Miya and his father Kanu also appears in the voters' list of 1970 of village Monjuri. The voters' list of 1985 of village Choutara Bhitorduar is also relied upon which contains the name of Alimuddin S/O Kanu Sarkar along with Halema Khatun W/O Alimuddin at Sl. No. 767 and 798 respectively. The voters' list of 1997 of village Monjuri also contains the names of Alimuddin S/O Late Kanu, Hamida Khatun W/O Alimuddin at Sl. No. 85 and that of Akram Hussain at Sl. No. 88 where all three are shown to be residing in the same house no. 21.

5. Akram Hussain of the 1997 voters' list of village Monjuri had rendered evidence before the Tribunal as DW2 stating that the petitioner Nobiron Nessa is his daughter and also daughter of Alimuddin of the voters' list of 1966, 1970, 1997 of village Monjuri as well as the voters' list of 1985 of village Choutara Bhitorduar.

6. In view of the above, the matter stands remanded back to the Tribunal to examine the aforesaid voters' lists as well as to examine the evidence rendered by the DW2 Akram Hussain. The respondents in the Home Department shall be at liberty to further cross examine the DW2, if so advised. The respondents in the Home Department to also make their own enquiry and verification and thereafter, submit a report before the Tribunal. Upon doing the needful, the Tribunal to pass a reasoned order.

7. The DW2 is stated to be Akram Ali and further reference is made that Akram Hussain of the 1997 voters' list of village Monjuri had subsequently been corrected as Akram Ali and in fact DW2 is Akram Ali and not Akram Hussain.
8. The petitioner to appear before the Tribunal on 04.08.2023.
9. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 23.10.2018 passed in GFT (R) Case No. 1415/2017 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

Minu

Comparing Assistant