

GAHC010100352023



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

Case No. : WP(C)/2778/2023

ANOWARA BEGUM
D/O- MD YUSUF ALI @ ISAB ALI
W/O- HANIF ALI,
R/O- BHOJKHOWA CHAPORI,
P.S.- TEZPUR,
DISTRICT- SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH-
THE SECRETARY,
TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
GRIHA MANTRALAYA, NEW DELHI.

2:THE STATE OF ASSAM
THROUGH-
THE SECRETARY

TO THE GOVERNMENT OF ASSAM

HOME DEPARTMENT

DISPUR
GUWAHATI-6.

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

NIRVACHAN SADAN ASHOKA ROAD

NEW DELHI- 110001.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI- 781005.

5:THE DEPUTY COMMISSIONER
SONITPUR
P.O.- TEZPUR

DISTRICT- SONITPUR
ASSAM

PIN- 784001.

6:THE SUPERINTENDENT OF POLICE (BORDER)
SONITPUR
P.O.- TEZPUR

DISTRICT- SONITPUR
ASSAM

PIN- 784001

Advocate for the Petitioner : MD. I HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER

25.08.2023

(A.M. Bujor Barua, J)

Heard Md. I. Hussain, learned counsel for the petitioner. Also heard Ms. L. Devi, learned Central Government Counsel as well as Standing Counsel, NRC, for the respondent Nos. 1 & 4; Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal, for respondent Nos. 2 & 6; Mr. T. Pegu, learned Standing Counsel, Election Commission of India, for respondent No. 3. Mr. P. Sharma, learned Government Advocate, Assam, for respondent No. 5.

2. The petitioner, namely, Anowara Begum, has been referred to the Foreigners' Tribunal No. (1st), Sonitpur, Assam, for rendering an opinion as to whether she is a foreigner under the Foreigners' Act, 1946, resulting in registration of F.T.(D) Case No. 4816/2012. The Tribunal rendered an opinion dated 19.01.2023 declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. In the writ proceeding, the petitioner relies upon the Voters List of the year 1965 of village Bhurabanda (2nd Part), Police Station Rupahihat, in the Nagaon District, which contains the name of Isabali, son of Ibrahim at Sl. No. 177 and his age is shown to be 30 years. It is claimed that Yusuf Ali is the father of the petitioner. Yusuf Ali rendered evidence before the Tribunal as DW-2 stating that the writ petitioner- Anowara Begum is his daughter. Accordingly, the petitioner claims that the burden under Section 9 had been discharged inasmuch as the evidence of DW-2 shows that she is the daughter of Yusuf Ali of Village

Bhurbanddha, whereas the name of Isabali appears in the Voters List of 1965 of village Bhurabanda.

4. It is noticed that the DW-2 had not been appropriately cross-examined by the respondents in the Home Department nor any effort had been made to verify as to whether DW-2, Yusuf Ali, and Isabali of the Voters List of 1965 are one and the same person. For the purpose, we remand the matter back to the Tribunal.

5. It is stated that the DW-2, Yusuf Ali, was 92 years old in August, 2022 when he rendered the evidence and today he is apparently 93 years old.

6. Considering the age of Yusuf Ali, we deem that his cross-examination should be done at the earliest.

7. Accordingly, the LCR be forthwith sent back to the Tribunal. Both the petitioner and the DW-2, Yusuf Ali, shall appear before the Tribunal on 31.08.2023. Upon his appearance, the Home Department may cross-examine the DW-2, Yusuf Ali, in any manner as may be advised on 31.08.2023 itself.

8. Even if the LCR do not reach the Tribunal, the Tribunal is requested to allow the cross-examination to take place and the supplementary record be open for the purpose.

9. The petitioner may produce any other relevant material it may desire before the Tribunal and the Home Department may also make their own verification and submit any further material as may be required. The Home Department to also verify as to whether the Isabali of the 1965 Voters List and DW-2, Yusuf Ali, are one and the same person. The petitioner to also produce the continuous and complete Voters List of village Bhurbandha from the year 1965 to 1999.

10. Upon doing the needful, the Tribunal to pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 19.01.2023, passed in F.T.(D) Case No. 4816/2012 and if it is against him, consequences under the law may follow.

11. Till the reasoned order is passed, no coercive action be taken against the petitioner.

12. The writ petition stands allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant