

GAHC010103732019



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

Case No. : WP(C)/3119/2019

SALEHA KHATUN
WIFE OF EMAN ALI, DAUGHTER OF MOYEJUDDIN SHEIKH @
MOYEJUDDIN, RESIDENT OF VILLAGE- KACHARIPETI PART-II, POLICE
STATION- ABHAYAPURI, DISTRICT- BONGAIGAON, ASSAM, PIN- 783383.

VERSUS

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

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

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

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM

PIN- 781005.

5:THE FOREIGNERS TRIBUNAL
BONGAIGAON NO. 2

ABHAYAPURI
POST OFFICE AND POLICE STATION- ABHAYAPURI
DISTRICT- BONGAIGAON
ASSAM
PIN- 783383.

6:THE DEPUTY COMMISSIONER
BONGAIGAON
POST OFFICE AND POLICE STATION- BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM
PIN- 783380.

7:THE SUPERINTENDENT OF POLICE (BORDER)
BONGAIGAON
POST OFFICE AND POLICE STATION- BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM
PIN- 783380.

8:THE OFFICER-IN-CHARGE OF ABHAYAPURI POLICE STATION

POST OFFICE- ABHAYAPURI
DISTRICT- BONGAIGAON
ASSAM
PIN- 783383

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 : 09.05.2023

(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 Coordinator of NRC, respectively. Also heard Mr. G. Sarma, 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, Bongaigaon.

2. The petitioner Saleha Khatun was referred to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri 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 BNGN/FT-2/APR/CASE NO. 155/2016 was registered. The Tribunal rendered its opinion dated 06.03.2019 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Golapara Pt. II, Circle Srijangram in the present Bongaigaon district which contains the name of Moyej Uddin son of Jalal at Sl. No. 269 and that of Malobi Nessa wife of Moyej Uddin at Sl. No. 270 and both are shown to be residing in the same house No. 101. The voters' list of 1970 of Golapara Pt. II is also relied upon by the petitioner which again contains the same information. The petitioner thereupon relies upon a Jamabandi of surveyed village in respect

of village Golapara Pt. IV which contains an order of the Circle Officer dated 14.07.2016 in Mutation Case No. 92/2016 in respect of a plot of land of Dag No. 401 by which, amongst others, the name of Saleha Khatun daughter of Moyejuddin Sheikh had been mutated in place of Moyejuddin Sheikh. By relying on the order of mutation, the petitioner claims that she has discharged the burden under Section 9 of the Foreigners Act, 1946 that she being the daughter of Moyejuddin Sheikh of village Golapara Pt. IV is a citizen of India.

4. We have noticed that the voters' list of 1966 is in respect of village Golapara Pt. II whereas the Jamabandi is in respect of a plot of land at village Golapara Pt. IV.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri to examine the aforesaid voters' lists as well as the Jamabandi that have been relied upon. The petitioner may adduce further evidence that the reference to Golapara Pt. II and Golapara Pt. IV is of the same place. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Bongaigaon may also make their own verification as to whether Moyej Uddin son of Jalal of the voters' list of 1966 of village Golapara Pt. II and Moyejuddin Sheikh referred in the Jamabandi are one and the same person. The respondents in the Home Department may also make any further verification, as may be advised and submit the report before the Tribunal. The petitioner may also adduce any further evidence, if so advised. 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 06.03.2019 in BNGN/FT-2/APR/CASE NO. 155/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner, to appear before the Tribunal on

17.06.2023. 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