

GAHC010109512021



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

Case No. : WP(C)/3930/2021

MANIKJAN NESSA
D/O SHARBESH ALI, W/O HANIF ALI, R/O VILL. 126 NO. UZIRAR CHAR, P.S.
PANCHARATNA, DIST. GOALPARA, ASSAM.

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECY. MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, NEW DELHI 110001

2:THE STATE OF ASSAM

REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
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 NO. 8
GOALPARA
ASSAM
DIST. GOALPARA
PIN 783101

6:THE DEPUTY COMMISSIONER

GOALPARA
P.O. GOALPARA
P.S. GOALPARA
DIST. GOALPARA
ASSAM
PIN 783101

7:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
P.O. GOALPARA
P.S. GOALPARA
DIST. GOALPARA
ASSAM
PIN 783101

8:THE OFFICER IN CHARGE OF PANCHARATNA P.S.
P.O. GOALPARA
DIST. GOALPARA
ASSAM
PIN 78310

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

28.06.2023

(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Goalpara as well as the Officer-in-Charge, Pancharatna Police Station and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Goalpara.

2. The petitioner, namely, Manikjan Nessa was referred to the Foreigners' Tribunal No.8th Goalpara for an opinion as to whether she is a foreigner within the meaning of Foreigner Act, 1946 resulting in the registration of F.T.(8) Case No.866/18 corresponding to IM(D)T Case No.117/2002) wherein the Tribunal had rendered an opinion dated 12.03.2021 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 Uzirer Char which contains the name of Mader Baksh son of Dhanu at Sl.No.566 and that of Sarbhan Nessa wife of Mader at Sl.No.567 along with Sarbesh Ali son of Mader at Sl.No.568. It is claimed that Mader Baksh is the grandfather of the petitioner and Sarbesh Ali is the father of the petitioner.

Further reliance is placed on the voters list of 1997 of village Dubapara Luptachar which contains the name of Kamal Uddin son of Sarbesh Ali at Sl.No.1194, Sarbesh Ali son of Madar Baksh at Sl.No.1371, Hasina Khatun wife of Sarbesh Ali at Sl.No.1372 and that of Jamal Uddin son of Sarbesh Ali at Sl.No.1373. It is claimed that Jamal Uddin and Kamal Uddin are two sons of Sarbesh Ali, although Kamal Uddin is residing separately at House No.188 and Jamal Uddin is residing along with Sarbesh Ali at House No.220. Kamal Uddin has rendered evidence as DW-2 stating that the petitioner Manikjan Nessa is his sister and daughter of Sarbesh Ali of the 1966 voters list of village Uzirer Char. The voters list of 2005 of village Uzirer Char also contains the name of Sarbesh Ali, Hasena Khatun and Jamal Uddin at Sl.Nos. 899, 909, 901 respectively. As Kamal Uddin had established that he is the son of Sarbesh Ali, whereas, the name of Sarbesh Ali appears in the voters list of 1966 of village Uzirer Char, a claim is made that the burden under Section 9 of the Foreigners Act 1946 has been discharged by the petitioner.

5. In view of the above, the matter stands remanded back to the Tribunal to examine the voters lists of 1966, 1970, 1977, 1985, 1997 and 2005 of village Uzirer Char as well as the evidence rendered by the DW-2 Kamal Uddin and pass a reasoned order thereon.

6. The respondents in the Home Department may also make their own verification on the aforesaid aspect and submit a report before the Tribunal.

7. Accordingly, the petitioner shall appear before the Tribunal on 07.08.2023.

8. The Tribunal upon doing the needful and after examining the materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 12.03.2021 of the Foreigners' Tribunal No.8th Goalpara in F.T.(8) Case No.866/18 (corresponding to IM(D)T Case No.117/2002) and if it is against the petitioner, consequential action under the law shall follow.

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

10. Writ petition stands disposed of in the above terms.

11. The complete voters list produced before the Court is returned back to the learned counsel for the petitioner for production of the same before the Tribunal.

12. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant