

GAHC010110012019



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

Case No. : WP(C)/3502/2019

NOBIRON NESSA
W/O- TARA MIYA, D/O- LATE ALIMUDDIN @ ALIMUDDIN MIYA,
PERMANENT R/O- VILL- CHUTARA, P.S- CHHAYGAON, PIN- 781137, DIST-
KAMRUP, ASSAM

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

4:THE DEPUTY COMMISSIONER
KAMRUP
ASSAM
PIN- 781031

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

6:COORDINATOR

NRC
BHANGAGARH
GUWAHATI- 0

Advocate for the Petitioner : MR. S B RAHMAN

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

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

Date : 27-01-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. AW Aman, learned counsel for the petitioner. Also heard Mr. B Chakravarty, learned CGC for the respondent No.1 being the Union of India, Mr. AI Ali, learned counsel for the respondent No.2 being the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners' Tribunal for respondents No. 3 and 5 and Ms. M Das, learned Government Advocate for the respondent No.4 being the Deputy Commissioner, Kamrup (Rural) and Ms. L Devi, learned counsel for the respondent No.6 being the authorities under the NRC.

2. The petitioner, namely, Nobiron Nessa was referred for an adjudication as to whether she is a person who had entered the State of Assam subsequent to 25.03.1971 and as a consequence, GFT(R) Case No.1415/2017 was registered in the Foreigners' Tribunal No.1 Kamrup(Rural). In course of the proceeding, the

petitioner exhibited the voters' list of 1997 of village Monjuri, Tukrapara in the Kamrup district wherein at Sl. No.84, the name of Alimuddin, son of Late Kanu appears and at Sl.No.88, the name of Akram Hussain, son of Alimuddin appears.

3. It is stated that Akram Hussain son of Alimuddin is the elder brother of the petitioner. The petitioner was married to Tara Miya as per the Marriage Certificate dated 20.01.1997 in the office of the Muslim Marriage and Divorces Registrar & Kazi Goraimari. It is also stated that the elder brother of the petitioner Akram Hussain son of Alimuddin is accepted to be a citizen of India and it is only the petitioner who had been referred for adjudication. If no doubt is cast by the authorities upon the citizenship of Alimuddin, son of Late Kanu and Akram Hussain son of Alimuddin of village Monjuri, Tukrapara in the Kamrup district and a linkage is established between the petitioner and the said persons it can be accepted that the petitioner would also be a citizen of India.

4. We have perused the voters' list of 1997 as noted above. We have also perused the Marriage Certificate dated 20.01.1997 of the Muslim Marriage and Divorces Registrar & Kazi Goraimari wherein the petitioner Nobiron Nessa is stated to be the daughter of Alimuddin of village Manjuribil Dundunitary, district Kamrup. The particulars of the father of the petitioner as indicated in the Marriage Certificate dated 20.01.1997 has a close resemblance with the voters list of 1997.

5. Further the Marriage Certificate dated 20.01.1997 would also be a document on record which can also be proved from the records maintained by

the Muslim Marriage and Divorces Registrar & Kazi Goraimari. In the circumstance, we are of the view that examining of the aforesaid material on record would be necessary in the interest of justice on the question as to whether the petitioner is a person who had entered the State of Assam subsequent to 25.03.1971. Accordingly, the matter is remanded back to the Foreigners Tribunal No.1 Kamrup(Rural) for an examination of the aforesaid materials.

6. In the event, the aforesaid materials are not exhibited, the petitioner may be given an opportunity to exhibit the same and also bring in any material specifically related to the voters' list of 1997 and the Marriage Certificate dated 20.01.1997 of the Muslim Marriage and Divorces Registrar & Kazi Goraimari, if so advised. But, however, this opportunity is not broad based and no opportunity would be allowed to the petitioner to bring in any further unrelated material. Upon the matter being remanded back, the opinion of the Foreigners Tribunal No.1, Kamrup(R) in GFT(R) Case No.1415/2017 dated 23.10.2018 is set aside.

7. The further opinion which the Foreigners Tribunal Kamrup(Rural) may render would prevail in respect of the claim of the petitioner. Accordingly, the petitioner shall appear before the Foreigners Tribunal No.1 Kamrup (Rural) on 01.03.2023.

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

9. Return back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant