

GAHC010110092019



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

Case No. : WP(C)/3269/2019

FUL KHATUN @ FULUWARA BEGUM
W/O- ABDUL KHALEK, D/O- LATE SEKANDAR ALI, R/O- VILL-
BHERAGAON, P.S- BARPETA, DIST- BARPETA, ASSAM, PIN- 781301

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, GOVT OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

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

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

4:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL NO.1
BARPETA
ASSAM
DIST- BARPETA
ASSAM
PIN- 781301

6:THE DEPUTY COMMISSIONER
BARPETA POST OFFICE AND POLICE STATION BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

7:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O AND P.S- BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

8:THE OFFICER IN CHARGE
BARPETA POLICE STATION
P.O- BARPETA
DIST- BARPETA
ASSAM
PIN- 78130

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 : 02.06.2023
(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 Co-ordinator of NRC, respectively. Also heard Ms. A. Verma, learned

counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. T. Pegu, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India and Mr. N.K. Das, learned counsel for the respondent No. 6, being the Deputy Commissioner, Barpeta .

2. The petitioner Ful Khatun @ Fuluwara Begum was referred to the Foreigners' Tribunal No. 1, Barpeta 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 F.T. Case No. 255/16 was registered. The Tribunal had rendered its opinion dated 12.03.2019 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 Jahurpam, Mouza Ghilajari in the Kamrup district which contains the name of Sekandar Ali son of Omed Ali at Sl. No. 82 and that of Sifatan Nessa wife of Sekandar Ali at Sl. No. 83 and both are shown to be residing in the same house No. 27. The petitioner also relies upon a school certificate issued by the Headmaster of Jahurpam High School which contains the information that Ful Khatun is the daughter of Sekandar Ali of village Jahurpam. The Headmaster of Jahurpam High School had also deposed before the Tribunal as DW3 wherein he stated that he had brought the admission register of the school along with him and according to the admission register, Ful Khatun daughter of Sekandar Ali of village Jahurpam had taken admission in the school on 04.03.1986. The petitioner claims that accordingly the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 1, Barpeta to examine the aforesaid voters' lists of 1966 of village

Jahurpam as well as the school certificate and the deposition of the DW3. To ensure the authenticity of the school admission register that was produced before the Tribunal, the same be again produced before the Tribunal by the school authorities and the Tribunal will examine the admission register and take a call to ensure that the entries therein are valid and acceptable in law.

5. We take note that the school certificate of the petitioner was rejected by the Tribunal as because the Headmaster who had issued the certificate had not examined himself but it was a subsequent Headmaster who was examined. The same cannot be a reason not to accept a certificate, if otherwise the certificate is valid inasmuch as, these certificates are issued on the basis of public records and if the public records are produced before the Tribunal, the authenticity of the certificates can be verified irrespective of the fact as to who had issued the certificates.

6. 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 12.03.2019 in F.T. Case No. 255/16 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 10.07.2023. 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