

GAHC010111932019



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

Case No. : WP(C)/3738/2019

RAHIMA KHATUN
D/O- LATE SELAM MIAH @ SALAM BEPARI, W/O- HAKIM UDDIN, R/O-
VILL- CHAPRA, MOUZA- JANIA, P.S- BARPETA, DIST- BARPETA, ASSAM,
PIN- 781314

VERSUS

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

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

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

4:THE STATE COORDINATOR
NRC
GOVT OF ASSAM
DISPUR
GUWAHATI- 06

5:THE DEPUTY COMMISSIONER
BARPETA
P.S- BARPETA
DIST- BARPETA

ASSAM
PIN- 781301

6:THE SUPERINTENDENT OF POLICE(B)
BARPETA
P.S AND DIST- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MR S ISLAM

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

17.03.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. S. Islam, learned counsel for the petitioner. Also heard Mr. B. Chakraborty, learned CGC, appearing for respondent No.1; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.3 and 6; Mr. T. Pegu, learned standing counsel, ECI, appearing for respondent No.2; Ms. L. Devi, learned standing counsel, NRC, appearing for respondent No.4 and Mr. N.K. Das, learned State counsel appearing for respondent No.5.

2. The petitioner Rahima Khatun had been referred to the Foreigners' Tribunal No.1st, Barpeta, for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of F.T. Case No.183/2016. The Tribunal rendered an opinion dated 10.09.2018 whereby the petitioner was declared to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1966 of village Shawrachara Non-K, Police Station-Bagbhor, Mouza-Titapani, in the Barpeta district, which contain the names of Selam Miah, S/O Ismail appeared at Sl. No.37 and that of

Fuljan Nessa, W/O Selam at Sl. No.38. The petitioner also relies on the voters list of 1970 of village Shawrachara Non-K, which also contain the names of Selam Miah, S/O Ismail and Fuljan Nessa, W/O Selam. The petitioner thereafter refers to the voters list of 1997 of village Shawrachara, which contains the names of Salam Bepari, S/O Ismail at Sl. No.121 and that of Motiar Rahman, S/O Salam at Sl. No.123 and further that of Fuljan Nessa, W/O Salam at Sl. No.122 and all of them are residing in the same house No.48.

4. The petitioner adduces the evidence of Motiar Rahman as DW-2, wherein in his evidence-in-chief it is stated that his sister Rahima Khatun and himself were born and brought up at village Shawrachara Non-K, Mouza-Titapani, Police Station-Baghbor of Barpeta district and after attaining majority, his sister Rahima Khatun was married to Hakim Uddin, S/O Mofez Sarkar of village Chapra, Mouza-Jania, in the Barpeta district. He also stated that the names of his father Selam Miah and mother Fuljan Nessa appeared in the voters list of 1966 and 1970. He also explained that in the voters list of 1997 the name of his father had been wrongly as Salam Bepari instead of Selam Miah. The Tribunal examined DW-2 Motiar Rahman, wherein he reiterated that his father died about 3 years back and the writ petitioner Rahima Khatun is his own sister. The State authorities had not cross-examined DW-2 so as to contradict the evidence rendered that the writ petitioner proceedee Rahima Khatun is the sister of Motiam Rahman and Motiam Rahman is the son of Selam Miah as per the voters list of 1997 and the name of Selam Miah appeared in the voters list of 1966 of the same village Shawrachara, the petitioner may have established that she is a citizen of India.

5. We have noticed the opinion of the Tribunal dated 10.09.2018 as to in what manner the evidence of DW-2 was dealt with. The Tribunal proceeded that the DW-2 Motiar Rahman failed to submit any voters list prior to 1997 and although deposed that the father died about 3 years back which according to the Tribunal would be the year 2015, but the proceedee did not submit any voters list of father after 1997 and accordingly concluded that the evidence of DW-2 to be unacceptable. If the proceedee did not submit any voters list prior to 1997 as well as after 1997, the same itself may not render the uncontroverted evidence of DW-2 to be unacceptable in law.

6. Accordingly, the matter is remanded back to the Foreigners' Tribunal No.1st, Barpeta, to re-appreciate the evidence of DW-2. If necessary, the State authorities may cross-

examine the DW-2 to controvert the evidence rendered by him. If more voters list are required, the petitioner may be allowed to produce the continuous voters list of village Shawrachara to establish her claim. Accordingly, the Tribunal upon consideration of the evidence and the materials on record shall pass a reasoned order. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 10.09.2018 and if it is against the petitioner, consequential action shall follow.

7. The petitioner shall accordingly appear before the Tribunal on 21.04.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.
8. Send back the LCR immediately.
9. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant