

GAHC010114182020



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

Case No. : WP(C)/3347/2020

MARJINA KHATUN
W/O- AKKABAR ALI @ AKBAR ALI, (D/O- SAMSUL HOQUE), R/O- VILL-
BALABHITHA, P.S. SORBHOG, DIST.- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE SUPERINTENDENT OF POLICE (B)
BARPETA
DIST.- BARPETA
ASSAM
PIN- 781301

4:THE DY. COMMISSIONER
BARPETA
P.O. AND DIST.- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

6:THE ASSAM STATE COORDINATOR OF NRC

BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

O R D E R

27.06.2023

(A.M. Bujor Barua, J)

Heard Mr. N Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Marjina Khatun had been referred to the Foreigners Tribunal No. 9, Barpeta for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No.149/2017, wherein an opinion dated 24.09.2018 was rendered declaring the petitioner to be a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Simlazar in the Barpeta district, which contains the name of Salimpur Miah son of Maharuddin at serial No. 203. It is claimed that Salimpur Miah is the

grandfather of the petitioner. But further reference is made on the voters list of 1970 of village Simlazar, which contains the name of Salimuddin son of Mahar at serial No. 243 and that of Samsul Hoque son of Salim at serial No. 245 as well as Salimpur Miah son of Maharuddin at serial No. 247. In the year 1966 Salimpur Miah was 35 years old and in the year 1970, he was 39 years old, which appears to be consistent with each other. But, Salimuddin son of Mahar is 49 years and his name does not appear in the voters list of 1966. But, however, it is claimed that Samsul Hoque of the 1970 voters list at serial No. 243 is the father of the petitioner. Samsul Hoque had rendered evidence before the Tribunal as DW-2 wherein it is stated that the petitioner Marjina Khatun is his daughter.

4. In view of the above, we remand the matter back to the Tribunal to examine the voters list of village Simlazar of the years 1966 and 1970 containing the name of Samsul Hoque in the 1970 voters list at serial No. 245 as well as the evidence rendered by DW-2. The respondents in the Home Department of Government of Assam may cross examine the DW-2 as may be advised to extract the veracity of the evidence rendered that Marjina Khatun is his daughter. The Tribunal shall also examine the confusion as to the father of Samsul Hoque as to whether it is Salimuddin or Salimpur Miah or both are in fact the same person. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 24.09.2018 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioners shall appear before the concerned Foreigners Tribunal on 03.08.2023. Till the reasoned order is passed, no coercive action be taken

against the petitioner.

7. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant