

GAHC010115432020



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

Case No. : WP(C)/3463/2020

JABEDA KHATUN

W/O- BADSHA MIA, D/O- KHALEQUE MIA @ A. KHALEQUE @ KHALEQUE
ALI, P.O. AND VILL- DAKSHIN SITOLI, P.S. BAGHBAR, DIST.- BARPETA,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.

REP. BY THE SECY. TO MINISTRY OF HOME AFFAIRS, THE GOVT. OF
INDIA, NEW DELHI-1

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER

BARPETA
P.O.
P.S. AND DIST.- BARPETA
ASSAM
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)

BARPETA
P.O.
P.S. AND DIST.- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI- 1

6:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION OF CITIZEN
(NRC)
ASSAM
BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

06.06.2023

(AM Bujor Barua, J)

Heard Mr. A R Sikdar, learned counsel for the petitioner. Also heard Mr. G Sarma, learned counsel for the Commissioner & Secretary to the Home Department, Dispur, Guwahati as well as The Superintendant of Police (Border), Barpeta, Ms. L Devi learned CGC appearing on behalf of respondents in the Union of India as well as for the respondents in the NRC, Ms. K Phukan, learned counsel for the Deputy Commissioner Barpeta and Mr. AI Ali, learned standing counsel for the Election Commission of India.

2. The petitioner, namely, Jabeda Khatun was referred to the Foreigners Tribunal No. 4, Nagaon for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T(D) Case No. 140/15 wherein the Tribunal rendered an opinion dated 06.12.2019 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, reliance is placed on the voters' list of 1966 of village Dakshin Shitoli, which contains the name of Saiyed Ali son of Goni at serial No. 40. It is claimed that Saiyed Ali is the grandfather of the petitioner. Reference is also placed on the voters' list of 1971 of village Dakshin Shitoli, P.S Baghbar in the present Barpeta district, which contain the name of Mairam Nessa wife of Saiyed Ali and that of A. Khaleque son of Saiyed respectively at serial No. 224 and 227, where both are shown to be residing in the same House No. 11/K.

4. It is also noticed that the name of Mairam Nessa wife of Saiyed Ali appeared along with Saiyed Ali in the voters' list of 1966. A. Khaleque son of Saiyed of village Dakshin Shitoli deposed before the Tribunal as DW-4, wherein he stated that the petitioner Jabeda Khatun is his own daughter who was born and brought up in the Barpeta district. It is noticed that DW-4 is the father of the petitioner, whose name appears in the voters' list of 1971.

5. In view of the above, the matter stands remanded back to the Tribunal to enable the Home Department to cross-examine DW-4 on the veracity of his evidence and also put it across as to whether DW-4 A. Khaleque and A. Khaleque of the 1971 of the voters' list are one and the same person. The respondents in the Home Department to also make their own verification and submit a report before the Tribunal and after doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.12.2018 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the concerned Foreigners Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.
8. The writ petition is allowed as indicated above.
9. Send back the LCR immediately.

JUDGE

Comparing Assistant