

GAHC010121292023



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

Case No. : WP(C)/3234/2023

SONA MIA @ SONA MIAH
S/O LATE ANSER ALI @ ANSER, R/O VILL-GUILEZA, P.S.-KALGACHIA,
DIST-BARPETA (ASSAM)

VERSUS

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

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
DEPARTMENT OF HOME AND POLITICAL
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER OF BARPETA
P.O. AND DIST-BARPETA
ASSAM
PIN-781301

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

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE CO-ORDINATOR OF NRC OF ASSAM
BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR K BHUYAN

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

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

ORDER

Date : 07.06.2023
(AM Bujor Barua, J)

Heard Mr. K Bhuyan, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of the Government of Assam, Ms. U Das, learned counsel for the respondent no. 3 being the Deputy Commissioner, Barpeta and Mr. AI Ali, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Sona Mia @ Sona Miah had been referred to the Foreigner's Tribunal No. 11, Barpeta for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of Case No. (Bpt/11th) F.T 2125/2017. The Tribunal rendered an opinion dated 18.11.2022 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 2010 of village Guileza which contains the names of Anser Ali, S/O Naimuddin at Sl. No. 405 and that of Sona Mia, S/O Anser at Sl. No. 406. It is claimed that Sona Mia of the 2010 voters' list of village Guileza is the petitioner himself and Anser Ali is his father. The name of Anser Ali appears in the voters' lists of 1985 and 1997 of village Guileza. To establish that Anser Ali himself is a citizen, the petitioner relies upon a citha of a plot of land at village Guileza which contains the name of Naimuddin Sheikh and it is claimed that Naimuddin Sheikh is the grandfather of the petitioner meaning thereby the father of Anser Ali. The jamabandi relies upon shows that the name of Anser Ali had been mutated in place of Naimuddin in respect of a plot of land at village Guileza and thereafter, the name of Sona Mia had been mutated in place of Anser Ali by the order of the Circle Officer dated 04.01.2021.

5. In view of the above instead of issuing notice and calling for the records, we remand the matter back to the Tribunal with a request that the implication of the voters' list of 2010, 1985 and 1997 of village Guileza containing the names of Sona Mia and Anser Ali be examined as well as the implication of the contents of the citha of the plot of land at village Guileza as well as the jamabandi be also examined and pass a reasoned order. We have clarified that we are not expressing any view on the acceptability or non-acceptability on the claim of the petitioner and we leave it entirely upon the Tribunal to arrive at its own conclusion about the implication of the aforesaid documents.

6. The petitioner to appear before the Tribunal on 13.07.2023.

7. Any order that the Tribunal may pass shall prevail over the opinion dated 18.11.2022 passed in Case No. (Bpt/11th) F.T 2125/2017 and if against,

consequence under the law is applicable to the petitioner.

8. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant