

GAHC010124842017



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

Case No. : WP(C)/1679/2017

MINATI DAS
D/O SADHAN DAS W/O SADHAN DAS VIL- NO. 2 CHOUDHURYPARA P.O.
BAMUNIGAON, P.S. BOKO DIST. KAMRUP, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
KAMRUP
BOKO
DIST-KAMRUP R
ASSAM

4:THE SUPERINTENDENT OF POLICE B
BOKO
DIST. KAMRUP R
ASSAM

5:THE OFFICER-IN-CHARGE

BOKO POLICE STATION
DIST. KAMRUP R
ASSA

Advocate for the Petitioner : MD.B ISLAM

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 14.03.2023
(AM Bujor Barua, J)

Heard Mr. MI Hussain, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondent no. 1 being the authorities under the Union of India, Mr. G Sarma, learned counsel for the respondents no. 2, 4 and 5 being the authorities under the Home Department of the Government of Assam and Ms. K Phukan, learned counsel for the respondent no. 3 being the Deputy Commissioner, Kamrup, Boko.

2. The petitioner Minati Das was referred to the Foreigners' Tribunal No. 2, Boko, Kamrup for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory subsequent to 25.03.1971, resulting in registration of BFT Case No. 380/2015 wherein an opinion was rendered that she is not a citizen of India. Being aggrieved this writ petition is instituted.

3. The petitioner relies upon a relief eligibility certificate issued by the Government of India Ministry of Rehabilitation wherein it is provided that Indra Mohan Toroni Das entered India from his original village Dhanachapur P.S. Kendua in the Mymensingh district of East Pakistan and the date of arrival in

India is 16.05.1964. From the information contained in the relief eligibility certificate it is discernable that Indra Mohan Toroni Das is not a person who entered the State of Assam from the specified territory on or after 25.03.1971.

4. The petitioner adduced the evidence of Laban Ch. Boro, Gaonburah of Choudhurypara Lat No. 3 where Indra Mohan Toroni Das resided subsequent to his entry into India. Laban Ch. Boro is stated to be aged about 81 (eighty one) years. In cross examination, Laban Ch. Boro stated as extracted:

“I know the opposite Minati Das since her birth. She is residing nearby my house. I know the father of opposite party who expired since long back.

I have issued one certificate Ex-F after verifying all the documents of opposite party. Ex-F(1) is my signature. She is an Indian citizen by birth. It is not a fact that she has filed false documents and also does not belong to Indian national. I know her background very well.”

5. A reading of the evidence rendered by the D.W.2 Laban Ch. Das in cross examination establishes the claim that the petitioner is the daughter of Indra Mohan Toroni Das inasmuch as the Gaonburah had rendered evidence from his knowledge that Indra Mohan Toroni Das has been residing nearby his house and he knew the family since long back.

6. It is also noted that D.W.2 Laban Ch. Boro has rendered the said evidence in cross examination in respect of the questions being put by the State Home Department meaning thereby that it is also the stand of the State Home Department that the petitioner is the daughter of Indra Mohan Toroni Das.

7. Accepting that the age of Laban Ch. Das D.W.2 is about 81 (eighty one) years when the evidence was rendered on 05.09.2016, the evidentiary value of D.W.2 cannot be rejected in any manner inasmuch as he had deposed from his own knowledge that he knows the family of the petitioner and that she is the

daughter of Indra Mohan Toroni Das who is not a person who entered the State of Assam from the specified territory on or after 25.03.1971 and the petitioner having established that she is the daughter of Indra Mohan Toroni Das, we accordingly hold that it cannot be declared that the petitioner is a person who entered the State of Assam on or after 25.03.1971. Accordingly, the citizenship of the petitioner is declared in her favour. The petitioner is entitled to all the rights as a citizen as admissible under the law.

8. Send back the LCR.

9. The opinion/order of the Foreigners' Tribunal No. 2 dated 23.09.2016 in BFT Case No. 380/2015 is set aside.

Writ petition stands allowed in the above terms.

JUDGE

JUDGE

Comparing Assistant