

GAHC010129892019



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

Case No. : WP(C)/4057/2019

BINA NATH BORO
W/O. LT. PRABIR BORO, R/O. BHARALUMUKH, P.S. BHARALUMUKH,
GUWAHATI, DIST. KAMRUP (M), ASSAM.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GUWAHATI
ASSAM-781006.

3:THE DY. COMMISSIONER OF POLICE (B)

KAMRUP (M)
PANBAZAR GUWAHATI
DIST. KAMRUP (M)
ASSAM-781001.

4:THE STATE COORDINATOR OF NRC

OFFICE OF THE STATE COORDINATOR
NRC ASSAM
1ST FLOOR

ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM-781005.

5:THE MEMBER

FOREIGNERS TRIBUNAL NO. 5
KAMRUP (M)
HEDAYATPUR
GUWAHATI-781003.

6:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
SANSAD MARG AREA
NEW DELHI-110001.

7:THE DY. COMMISSIONER

KAMRUP (M)
OFFICE OF THE DY. COMMISSIONER
PANBAZAR
GUWAHATI
ASSAM-781001.

8:THE OFFICER IN CHARGE

BHARALUMUKH POLICE STATION
BHARALUMUKH
GUWAHATI
ASSAM-781001

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 27.01.2023
(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Mr. R K D Choudhury, learned Dy.SGI for the respondent no. 1 being the Union of India, Mr. G Sarma, learned counsel for the respondent no. 2, 3 and 5 being the Home and Political Department of the Government of Assam, Ms. L Devi, learned counsel for the respondent no. 4 being the authorities under the NRC and Ms. U Das, learned counsel for the respondents no. 7 and 8 being the Deputy Commissioner, Kamrup(M) and Officer-in-Charge, Bharalumukh Police Station.

2. The petitioner Bina Boro whose maiden name is Bina Nath was referred to the Foreigners' Tribunal No. 5, Kamrup(M) for an adjudication as to whether she is a person who entered the State of Assam subsequent to 25.03.1971 which resulted in the registration of FT Case No. 2215/2016. The petitioner claims that she is a destitute having lost both her parents when she was about six years old and presently the petitioner is aged about 87 years. The petitioner states that she contributed to her own self by working as a helping hand in various houses since she lost both her parents and around the year 1967 she married her husband Prabir Boro and since then is expressing herself in the name of Bina Boro. Before the Tribunal the petitioner brought in the deposition of Smt. Lili Baishya who was aged about 64 years on 21.08.2017 when her evidence was recorded. In her examination in chief, Smt. Lili Baishya stated as extracted:

“I know the present O.P. Bina Boro @ Bina Nath since 1970 as she and her husband were part time worker in our home at Santipur thenceforth on being asked, she told that her maiden surname was Nath and after being got married with Prabir Boro her surname was change to Boro. Still the present O.P. comes to our house sometimes.”

3. In the cross the state authorities deemed it appropriate not to controvert Smt. Lili

Baishya. To the question of the Court Smt. Lili Baishya replied that the husband of the petitioner died about 20 years back and she was married in the year 1967. She also admitted that she cannot say anything about the family history of the petitioner prior to 1970 which can also be understandable from the stand the petitioner is taking that she is a destitute since the age of six years. The examination in chief of Smt. Lili Baishya makes it explicitly clear that the petitioner Bina Boro @ Bina Nathwas was working as a part time worker at her house at Santipur since 1970.

4. If the existence of the petitioner is seen by Smt. Lili Baishya around 1970 it cannot be accepted that the petitioner is a person who entered the State of Assam subsequent to 25.03.1971.

5. In view of the above, we set aside the opinion dated 30.08.2017 passed in FT Case No. 2215/2016 of the learned Foreigners' Tribunal No. 5, Kamrup(M) and accordingly, declare the petitioner to be the citizen of India and at least to be a person who had not entered the State of Assam subsequent to 25.03.1971. The petitioner shall be entitled to all the benefits under the law as she may be entitled as a citizen.

6. Send back the LCR.

Writ petition stands allowed in the above terms.

JUDGE

JUDGE

Comparing Assistant