

GAHC010131602019



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

Case No. : WP(C)/3950/2019

HAMIDA KHATUN
D/O. HAYET ALI, W/O. SAMAD ALI, VILL. TAKAKATA, P.O. SONABARI, P.S.
KALGACHIA, DIST. BARPETA, ASSAM, PIN-781308.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-
110001.

2:THE ELECTION COMMISSIONER OF INDIA

GOVT. OF INDIA
NEW DELHI-110001.

3:THE STATE OF ASSAM

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

4:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
BHANGAGARH
GUWAHATI-05.

5:THE DY. COMMISSIONER

BARPETA
ASSAM

PIN-781301.

6:THE SUPDT. OF POLICE (B)

BARPETA
DIST. BARPETA
ASSAM
PIN-781301

Advocate for the Petitioner : MR H R A CHOUDHURY

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 26.06.2023
(A.M. Bujor Barua, J)

Heard Ms. B. Barman, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. A.I. Ali, learned counsel for the respondent No. 2, being the authorities in the Election Commission of India; Mr. G. Sarma, learned counsel for the respondents No. 3 and 6, being the authorities in the Home Department and Ms. U. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Hamida Khatun was referred to the Foreigners' Tribunal No. 5, Barpeta for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946 and accordingly Case No. FT(5th)604/15 was registered. The Tribunal had rendered its opinion dated 21.07.2018 by arriving at its conclusion that the petitioner is a foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Balikuri, Mouza Jania in the Kamrup district which contains the name of Nayeb Ali son of Saher Ali at Sl. No. 1589. It is claimed that Nayeb Ali is the grandfather of the petitioner. Similar information is also available in the voters' list of 1970 of village Balikuri Non-k. The petitioner also relies upon the voters' list of 1977 of village Balikuri, Mouza Jania in the Kamrup which contains the names of Nayeb Ali son of Saher at Sl. No. 2257 and Hayet Ali Ahmed son of Nayeb at Sl. No. 2261 and both are shown to be residing in the same house No. 579. It is claimed that Hayet Ali Ahmed is the father of the petitioner and as the name of Hayet Ali Ahmed appears along with Nayeb Ali in voters' list of 1977 of village Balikuri Non-k where the name of Nayeb Ali appears in the voters' list of 1966 of village Balikuri, the burden under Section 9 of the Foreigners Act, 1946 has been discharged Hayet Ali Ahmed himself is an Indian citizen. Hayet Ali had rendered evidence before the Tribunal as DW2 wherein he stated that the petitioner Hamida Khatun is his daughter.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 5, Barpeta to examine the aforesaid voters' lists of 1966, 1970 and 1977 of village Balikuri in the Kamrup district as well as the evidence rendered by DW2. The State respondents in the Home Department may cross-examine the DW2, if so advised, to extract veracity of the evidence that he may render. The State respondents in the Home Department may also make their own verification and thereafter submit a report before the Tribunal.

5. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 21.07.2018 in Case No. FT(5th)604/15 and if it is against the petitioner, consequences under law shall follow. The petitioner to

appear before the Tribunal on 01.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant