

GAHC010133172019



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

Case No. : WP(C)/4176/2019

KALYANI SAHA @ KALYANI RANI SAHA @ KALYANI BASAK
DAUGHTER OF LATE KALI NARAYAN SAHA, WIFE OF LATE GOBINDA
BASAK, R/O- BARPETA ROAD, RAM NAGAR, WARD NO. 1, P.S. BARPETA
ROAD, DISTRICT- BARPETA (ASSAM).

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME DEPARTMENT, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND P.S. BARPETA
DISTRICT- BARPETA
ASSAM
PIN- 781315.

4:THE DEPUTY COMMISSIONER
BARPETA
DISTRICT- BARPETA
ASSAM
PIN- 781315.

5:ELECTION COMMISSION OF INDIA
REPRESENTED BY CHIEF ELECTION COMMISSIONER

NEW DELHI-1.

6:STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHARALUPAR
BHANGAGARH
GUWAHATI- 781005

Advocate for the Petitioner : MR. S ALIM

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

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

Date : 29-03-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. S Alim, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, as well as the Superintendent of Police (B) Barpeta and Mr. TR Gogoi, learned Government Advocate for the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Kalyani Saha @ Kalyani Rani Saha @ Kalyani Basak was referred to the Foreigners Tribunal No.2nd Barpeta 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.(2nd)Case No.805/16 corresponding to Ref IM(D)T Case No.8780/A/98 wherein an opinion dated 12.06.2018 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Barpeta Ward No.2, Mouza Gobardhana which contains the name of Kali Narayan Saha, son of Makhan at Sl.No.1715. The petitioner also relies upon the voters list of 1997 of village Barpeta Ward No.2, Mouza Gobardhana which contains the name of Kali Saha at Sl.No.93 and that of Pradyut Saha son of Kali at Sl.No.95. Pradyut Saha son of Kali rendered his evidence as DW-2 stating that Kalyani Saha @ Kalyani Rani Saha @ Kalyani Basak is his elder sister and that their father is Kalinarayan Saha whose name appears in the voters list of 1966 of village Barpeta Ward No.2, Mouza Gobardhana at Sl.No.1715. In cross, DW-2 Pradyut Saha stated that the proceedee Kalyani Saha @ Kalyani Rani Saha @ Kalyani Basak is his elder sister and she was born in their own parents home at Sarupeta PS Barpeta and that presently she is residing in her deceased husband's home at Barpeta Road.

5. From the above, it is noticed that DW-2 Pradyut Saha had rendered specific evidence in his examination-in-chief that the proceedee Kalyani Saha @ Kalyani Rani Saha @ Kalyani Basak is his own elder sister, which in cross by the

State authorities it was reiterated that Kalyani Saha @ Kalyani Rani Saha @ Kalyani Basak is his elder sister and was born in their own parents home at Sarupeta PS Barpeta.

6. As the evidence rendered by the DW-2 Pradyut Saha could not be rebutted in appropriate manner, we have to accept the evidence of DW-2 Pradyut Saha that the proceedee Kalyani Saha @ Kalyani Rani Saha @ Kalyani Basak is his elder sister.

7. It is also noticed that the name of Pradyut Saha appearing along with Kali at Sl.No.95 in the voters list of 1997 of village Barpeta Ward No.2, Mouza Gobardhana, whereas in the voters list of 1966 of village Barpeta Ward No.2, Mouza Gobardhana the name of Kali Narayan Saha, son of Makhan appears at Sl.No.1715. We do not notice any substantial difference between Kali Nayaran Saha and Kali and more so when both Kali Nayaran Saha and Kali are shown to be son of Makhan.

8. Although the petitioner relies upon a school certificate issued by the Headmistress of Kanailal Bidyapith (ME) Barpeta Road which contains the information that St. Kalyani Saha is the daughter of Kalinarayan Saha of Barpeta Road in the district of Barpeta, but we have noticed that the Headmistress has not been examined. But as the evidence rendered by the DW-2 Pradyut Saha who as per voters list of 1997 is the son of Kali, where the name of Kali Narayan Saha appears in the voters list of 1966 of village Barpeta Ward No.2, Mouza Gobardhana, we are satisfied that the burden has been discharged by the

petitioner under Section 9 of the Foreigners Act 1946 that she is a citizen of India.

9. In view of the aforesaid materials clinching the issue in favour of the petitioner, the petitioner deserves a declaration that she is a citizen of India and it is declared accordingly.

10. Consequently, all such legal rights and privileges that may accrue to the petitioner Kalyani Saha @ Kalyani Rani Saha @ Kalyani Basak upon such declaration that she is a citizen of India be made available to her.

11. Writ petition, accordingly, stands allowed.

JUDGE

JUDGE

Comparing Assistant