

GAHC010135562018



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

Case No. : WP(C)/4262/2018

JYOTSNA RANI DUTTA ALIAS JYOTSNA RANI DUTTA PURKAYASTHA
W/O. LT. PRITILAL DUTTA @ LT. PRITI DUTTA PURKAYASTHA, VILL.
SIGIMARI NANKE, P.S. KACHUA, DIST. NAGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI

2:THE STATE OF ASSAM

THROUGH THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.

3:THE SUPDT. OF POLICE (B)

NAGAON
ASSAM.

4:THE DY. COMMISSIONER

DEPUTY COMMISSIONERS OFFICE
NAGAON
ASSAM.

5:THE OFFICER IN CHARGE

KACHUA POLICE STATION
NAGAON

ASSAM.

6:COORDINATOR NRC ASSAM

1ST FLOOR
ACHYUT PLAZA
GUWAHATI SHILLONG ROAD
BHANGAGARH
GUWAHATI
ASSAM

7:ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
DELHI
INDIA

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

Date : 17-05-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Ms. D Ghosh, 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, Mr. J Payeng, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam,

the Superintendent of Police (B) Nagaon as well as the Officer-in-Charge, Kachua Police Station, Nagaon and Mr. PK Medhi, learned Government Advocate for the Deputy Commissioner, Nagaon.

2. The petitioner, namely, Jyotsna Rani Dutta @ Jyotsna Rani Dutta Purkayastha was referred to the Foreigners Tribunal No.2 Nagaon 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. Case No. wherein an opinion dated 17.04.2018 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 1971 of village Ward No.10 of Nagaon Town which contains the name of Jyotshna Rani wife of Priri Dutta Purukasthya at Sl.No.1152 and that of Priti Dutta, son of Gyandra at Sl. No.1151 and both are shown to be residing in the same House No.83. The petitioner claims that Jyotshna Rani wife of Priri Dutta Purukasthya appearing at Sl.No.1152 of the 1971 voters list in respect of village Ward No.10 of Nagaon Town is the petitioner herself. No credible material is available before the Court that the writ petitioner/proceedee Jyotsna Rani Dutta @ Jyotsna Rani Dutta Purkayastha is not the Jyotshna Rani wife of Priri Dutta Purukasthya appearing at Sl.No.1152 of the 1971 voters list. The voters list of 1971 is a photocopy of the certified copy of the voters list duly issued by the competent authority. But at the same time, the original of the certified copy had been

produced before the Tribunal and there is an endorsement of the Tribunal that it has been proved.

5. A certified copy is governed by the provisions of Sections 63, 76 and 79 of the Indian Evidence Act, 1872 (for short, the Act of 1872). Section 63 of the Act of 1872 provides that secondary evidence means and includes certified copies given under the provisions contained therein. Section 76 of the Act of 1872 provides the procedure by which a certified copy may be issued by a public officer having the custody of a public document. It is noticed that the certified copy of the voters list of 1971 had been issued by the Electoral Officer and it is stated that an Electoral Officer is a public official and is a custodian of the voters list. It is also noticed that the requisite stamp fees as required under Section 76 of the Act of 1872 has also been paid by the petitioner for procuring the certified copy. Section 79 of the Act of 1872 provides that the Court shall presume every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any Officer etc., who is duly authorized thereto for the purpose. As in the instant case, the certified copy of the voters list of 1971 had been issued by an official who is duly authorised to issue a certified copy and the requirement of Section 76 has also been complied with, we are of the view that there is no further requirement of the proceedee to prove the contents of the certified copy of the voters list of 1971. It is noticed that in the order impugned dated 17.04.2018 of the Foreigners Tribunal No.2 Nagaon, the certified copy of the voters list of 1971 of village Ward No.10 of Nagaon Town had been rejected by the Tribunal on the

ground that the petitioner had failed to prove through any other cogent evidence as regards the contents of the certified copy. As under the Evidence Act, as indicated above, there is a presumption under the law as regards genuinity of the contents of a certified copy, once the certified copy had been duly issued by following due procedure of law laid down in the Evidence Act itself, there is no requirement to prove the contents thereof, we are of the view that the Tribunal had misdirected itself in declaring the petitioner to be a foreigner by not accepting the certified copy of the voters list of 1971 in respect of village Ward No.10 of Nagaon Town. If the name of the petitioner appears in the voters list of 1971 of village Ward No.10 of Nagaon Town along with her husband, it can be safely accepted that the petitioner cannot be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

6. As already indicated above, no material is also available on record that the writ petitioner proceedee Jyotsna Rani Dutta @ Jyotsna Rani Dutta Purkayastha and Jyotshna Rani wife of Priri Dutta Purukasthya appearing at Sl.No.1152 of the 1971 voters list are not one and the same person.

7. In view of the above, on being satisfied and upon the burden being discharged by the petitioner under Section 9 of the Foreigners Act 1946, we declare the petitioner Jyotsna Rani Dutta @ Jyotsna Rani Dutta Purkayastha to be a citizen of India. Consequently, all such legal rights and privileges that may accrue to the petitioner Jyotsna Rani Dutta @ Jyotsna Rani Dutta Purkayastha upon such declaration that she is a citizen of India be made available to her.

8. However, we leave it open to the respondents in the Home Department, Government of Assam to make their own verification and if it is found that the writ petitioner proceedee Jyotsna Rani Dutta @ Jyotsna Rani Dutta Purkayastha and Jyotshna Rani wife of Priri Dutta Purukasthya appearing at Sl.No.1152 of the 1971 voters list are not one and the same person, the respondents would be at liberty to bring it to the notice of the Court in any appropriate forum.

9. Writ petition, accordingly, stands allowed.

10. LCR be sent back.

JUDGE

JUDGE

Comparing Assistant