

GAHC010135912017



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

Case No. : WP(C)/4553/2017

FAZILA KHATUN
D/O. ANAR ALI, W/O. ABDUL KALAM, VILL. SORBHOG GAON, P.S.
SORBHOG, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI.-01.

2:THE STATE OF ASSAM

REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

3:THE DY. COMMISSIONER

BARPETA DISTRICT
ASSAM.

4:THE SUPDT. OF POLICE B

BARPETA
DIST. BARPETA
ASSAM.

5:THE OFFICER IN CHARGE

SORBHOG POLICE STATION
DIST. SORBHOG

ASSAM

Advocate for the Petitioner : MR.M U MAHMUD

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17.08.2023
(AM Bujor Barua, J)

Heard Mr. MU Mahmud, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents 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 Government of Assam and Mr. P Sarma, learned Additional Senior Government Advocate for the respondent no. 3 being the Deputy Commissioner, Barpeta.

2. The petitioner Fazila Khatun was referred to the Foreigners' Tribunal No. 11, Barpeta for rendering an opinion as to whether she is a foreigner under the Foreigners' Act, 1946 resulting in registration of F.T. Case No. 556/2016. The Tribunal rendered an opinion dated 21.06.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon a voters' list of 1966 of village Bhera Police Station Sorbhog in the present Barpeta district which contains the names of Azimuddin Munshi S/O Moniruddin at Sl. No. 111, Abjan

Nessa W/O Azimuddin at Sl. No. 112 and that of Anar Ali S/O Azimuddin at Sl. No. 115 where all three are residing in the same house No. 38. It is claimed that Azimuddin Munshi is the grandfather, Abjan Nessa is the Grandmother and Anar Ali is the father of the petitioner. The name of Anar Ali also appears in the subsequent voters' lists. The voters' list of 1997 of village Bheragaon contains the name of Anar Ali S/O Azim at Sl. No. 860, Jahura Khatun W/O Anar at Sl. No. 861 and that of Jahural Haque S/O Anar at Sl. No. 862 and all three are residing in the same house no. 19. It is claimed that Jahural Haque is the brother of the petitioner.

5. Be that as it may the name of Jahural Haque appears along with Anar Ali and Jahura Khatun where the name of Anar Ali appears in the voters' list of 1966 of village Bhera.

6. Jahural Haque has deposed as DW2 before the Tribunal that the petitioner Fazila Khatun is his sister being the daughter of Anar Ali.

7. In view of the above the matter stands remanded back to the Tribunal to examine the voters' list of 1966 of village Bhera as well as the other subsequent and complete voters' lists of village Bhera including the voters' list of 1997 as well as to take note of the evidence rendered by Jahural Haque as DW2 and pass a reasoned order. The respondents in the Home department may cross examine the DW2 Jahural Haque as may be advised. The respondents in the Home Department may make their own enquiry and submit a report before the Tribunal. Upon doing the needful the Tribunal to pass a reasoned order.

8. The petitioner to appear before the Tribunal on 18.09.2023.

9. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 21.06.2017 passed in Case F.T. Case No.

556/2016 and if against, consequence under the law is applicable to the petitioner.

10. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant