

GAHC010145582018



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

**Case No. : WP(C)/4525/2018**

MOTIZAN NESSA  
D/O. LATE MD. AMAR ALI @ OMAR ALI, W/O. LATE HAZRAT ALI, R/O.  
VILLAGE- BALARCHAR PART-II, P.S. MERERCHAR, DIST. BONGAIGAON,  
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, HOME DEPTT., NEW  
DELHI-1.

2:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
HOME DEPTT.  
DISPUR  
GUWAHATI-6.

3:THE ELECTION COMMISSION OF INDIA  
NIRVACHAN SADAN  
ASHOK ROAD  
NEW DELHI  
PIN- 110001.

4:THE DEPUTY COMMISSIONER  
BONGAIGAON  
DIST. BONGAIGAON  
ASSAM  
PIN- 783380.

5:THE SUPERINTENDENT OF POLICE (BORDER)  
BONGAIGAON  
DIST. BONGAIGAON

ASSAM  
PIN- 783380.

6:THE STATE COORDIANTOR

NATIONAL REGISTRATION OF CITIZEN  
ASSAM  
BHANGAGARH  
GUWAHATI-05

**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 MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**26.04.2023**

*(AM Bujor Barua, J)*

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

2. The petitioner, Musst. Motizan Nessa was referred to the Foreigners Tribunal Bongaigaon No.2, Abhayapuri 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 in BNGN/F.T-2/APR/Case No.178/2017 arising out of reference BNGN P.E. No.30/2013 wherein an opinion dated 29.05.2018 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 Balarchar, Abhayapuri, Goalpara which contains the name of Somser Ali, son of Mano Mondal at Sl.No.160 and that of Amar Ali, son of Somser Ali at Sl.No.162. It is stated that Amar Ali, son of Somser Ali is the father of the petitioner.

5. The petitioner also relies upon the voters list of 1989 of village Balarchar which contains the name of Omar Ali, son of Lt. Songser Ali at Sl.No.814 and that of Mofij Uddin, son of Omar Ali at Sl.No.816 and both are shown to be residing in the same House No.348.

6. Mofij Ali @ Mafej Ali, son of Lt Amar Ali @ Omar Ali has rendered evidence before the Tribunal as DW-2, wherein he has stated that he is the brother of the petitioner Motizan Nessa and that she is also the daughter of Amar Ali @ Omar, whose name appears in the voters list of 1966 and 1997 in respect of village Balarchar, Abhayapuri, Goalpara.

7. We have taken note of the name of Mofez Ali appearing along with Omar

Ali in the 1997 voters list in respect of village Balarchar and if the evidence rendered by Mofej Ali as DW-2 is accepted, the petitioner may have discharged the burden that she is a citizen of India.

8. In the circumstance, the matter stands remanded back to the Tribunal to examine the veracity of the evidence rendered by DW-2 Mofej Ali as to whether he is actually the brother of the petitioner and whether the petitioner is the daughter of Omar Ali of 1966 and 1997 voters list in respect of village Balarchar.

9. On being remanded back, the Home Department to the Government of Assam through the Superintendent of Police Bongaigaon may make their own verification on the authenticity of the aforesaid material and the State respondents shall also be given the opportunity to cross examine the DW-2 Mofez Ali.

10. Accordingly, the petitioner shall appear before the Tribunal on 06.06.2023.

11. The Tribunal after undertaking the aforesaid exercises and upon examining the evidences and materials on record shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the order dated 29.05.2018 of the Foreigners Tribunal Bongaigaon No.2, Abhayapuri in BNGN/F.T-2/APR/Case No.178/2017 arising out of reference BNGN P.E. No.30/2013 and if it is against the petitioner, consequential action under the law shall follow.

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

13. Writ petition stands disposed of in the above terms.

**JUDGE**

**JUDGE**

**Comparing Assistant**