

GAHC010155462023



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

Case No. : WP(C)/4065/2023

JAYTAN NESSA
D/O- ABDUR RAHMAN @ABDUL RAHMAN,
VILL- DUBAPARA LUPTACHAR (SONAPUR NATUN BASTI),
P.S- MORNOI,
DIST- GOALPARA,
PIN-783121

VERSUS

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

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

3:THE DEPUTY COMMISSIONER
GOALPARA
PIN-783101

4:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
PIN-783101

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

6:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS

ASSAM
GUWAHATI-32
DIST- KAMRUP (M

Advocate for the Petitioner : MR. A ROSHID

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

24.07.2023

(A.M. Bujor Barua, J)

Heard Mr. A Roshid, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the respondents in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Goalpara.

2. The petitioner Jaytan Nessa is referred to the Foreigners Tribunal No.4, Goalpara for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No. FT(G-4)M/231/2018.

3. In course of the proceeding, the petitioner filed petition No. 8726 and 8728, both dated 13.10.2022. By the petition No. 8726, the petitioner prayed for a report to be called for from the police on the question as to what name of the father of the proceedee was disclosed before the police. The said application was instituted in the circumstance that the petitioner claims that a wrong name

of her father was recorded by the police at the enquiry stage.

4. By the petition No. 8728, the petitioner proceedee prayed for being allowed to exhibit the certified copy of a Chitha in respect of a plot of land, the contents whereof is sought to be relied upon to prove the citizenship of the petitioner.

5. Both the petitions were rejected by the order dated 16.11.2022 by the Tribunal.

6. As regards the petition No. 8728, the Tribunal was of the view that the incorrect recording of the name of her father was not taken as a plea in the written statement nor it was mentioned in the earlier stage of the proceeding and therefore, such correction cannot be allowed.

7. If the name of the father had been wrongly recorded, it cannot be a case that the same cannot be corrected, of course subject to production of relevant material to substantiate the same. Neither acquiescence nor waiver would be applicable in such case which would prevent the proceedee from correcting the wrong name of the father being recorded. It would also have to be taken note that if a wrong name of the father had been recorded, the petitioner would have to prove her citizenship through the wrongly recorded name of her father, which again, would be an impossibility. Further, if the petitioner wants to rely upon any further documents including the certified copy of a Chitha, the contents whereof may prove her citizenship, we do not see as to why such opportunity should not be given to the petitioner.

8. For both the reasons, the order dated 16.11.2022 in Petition No. 8726 and 8728 in Case No. FT(G-4) M/231/2018 is set aside with a direction to the Tribunal to allow the petitioner to produce the necessary documents to show the

correct name of her father and do the correction, if otherwise so advised as well as allow her to produce any further material in the form of a Chitha, if contents of such document can prove her citizenship.

9. Accordingly, the petitioner shall appear before the concerned Foreigners Tribunal on 17.08.2023.

10. The writ petition is allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant