

GAHC010158752023



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

Case No. : WP(C)/4151/2023

MUSSTT NAZMA BEGUM
D/O- MAKARAM ALI,
@MD. MOHAMMAD MOKRAM ALI,
W/O- MD. JALAL ALI,
VILL- DURIBAM GAON,
P.S- KAKOTIBARI,
DIST- CHARAIDEO, ASSAM

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

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

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM

G.S ROAD.
BHANGAGARH
GUWAHATI-05

DIST- KAMRUP (M)

5:THE MEMBER FOREIGNERS TRIBUNAL

DIST- JORHAT
ASSAM
PIN-785001

6:THE SUPERINTENDENT OF POLICE (B)
CHARAIDEO
ASSAM
PIN-78569

Advocate for the Petitioner : MR S M ABDULLAH P

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

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

ORDER

Date : 28.07.2023

(A.M. Bujor Barua, J)

Heard Mr. S. Hoque, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. A.I. Ali, learned counsel for the respondent No. 2, being the Election Commission of India and Ms. A. Verma, learned counsel for the respondents No. 3, 5 and 6, being the authorities in the Home Department.

2. The petitioner Musstt Nazma Begum had been referred to the Foreigners Tribunal, Jorhat 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 Case No. FT/CRD/2/2018. The Tribunal rendered an opinion dated 14.12.2018 declaring the petitioner to be a foreigner.

3. It is noticed that the petitioner after receipt of notice from the Tribunal, the petitioner appeared before the Tribunal and submitted her written statement, but thereafter, did not appear before the Tribunal any further and neither any evidence nor any material had been produced to discharge the burden under Section 9 of the Foreigners Act, 1946.

4. From the facts narrated above, we do not find any infirmity in the order dated 14.12.2018. But, however, for the interest of justice, the petitioner is given one more opportunity to establish her case on merit by discharging the burden under Section 9 of the Foreigners Act, 1946.

5. In view of the above, the order dated 14.12.2018 is set aside.

6. Accordingly, the petitioner shall appear before the Foreigners Tribunal, Jorhat on 21.08.2023.

7. It is stated that the petitioner is under detention in the detention camp at Jorhat. Accordingly, we direct the Superintendent of Police (Border), Jorhat, to release the petitioner forthwith, so as to enable her to appear before the Tribunal at Jorhat. The Superintendent of Police (Border), Jorhat, while releasing the petitioner may obtain necessary information and documentation as required under the Rules from the petitioner for securing her presence. The Superintendent of Police (Border), Jorhat shall also take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner.

8. It is made clear that the petitioner shall not leave the jurisdiction of Jorhat district without giving details of the place of destination and her place of stay to the Superintendent of Police (Border), Jorhat including relevant contact/mobile number. It is further made clear that failure on the part of the petitioner to provide the relevant mobile/contact number will warrant recalling of this release order.

9. However, because of the conduct of the petitioner in not appearing before the Tribunal without any reasonable cause, the petitioner to pay a cost of Rs. 5000/- in the account of Gauhati High Court Bar Association Welfare Fund and the petitioner would be allowed to appear before the Tribunal on being released from detention on the aforesaid date only upon showing proof of payment of the cost being paid.

10. It is expected that the petitioner would cooperate with the Tribunal in the proceeding and any further deliberate non-appearance would be viewed strictly. It is also expected that the petitioner would be released from custody before the date of appearance of the petitioner.

11. The writ petition is disposed of as indicated above.

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Comparing Assistant