

GAHC010168022019



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

Case No. : WP(C)/5107/2019

JAMINA KHATUN
W/O- NURUL ISLAM,
D/O- LATE SHONGSER ALI,
VILL- BHAIKHAITI PATHER,
PS- BHELOUWGURI,
DISTRICT- MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI, 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI

4:THE STATE COORDINATOR
NRC ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5

5:THE STANDING COUNCIL
SPECIAL FT AND BOARDER

6:THE DEPUTY COMMISSIONER
MORIGAON
ASSAM.

7:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
ASSAM

8:THE O/C
BHELOWGURI POLICE STATION
MORIGAO

Advocate for the Petitioner : MR. J AHMED

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

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

ORDER

Date : 16.05.2023

(A.M. Bujor Barua, J)

Heard Mr. J. Ahmed, learned counsel for the petitioner and Ms. J. Sarmah, learned counsel for the respondent No. 1, being the Union of India. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India; Ms. L. Devi, learned counsel for the respondent No. 4, being the State Coordinator of NRC and Mr. T.R. Gogoi, learned counsel for the respondent No. 6, being the Deputy Commissioner, Morigaon.

2. The petitioner Jamina Khatun was referred to the Foreigners' Tribunal No. 5, Morigaon for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and Case No. F.T.(D) 135/2015 (New Number) corresponding to F.T.(D) 1207/12

(Old Number) was registered. The Tribunal rendered its opinion dated 28.11.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Sitalmari Colony, P.S. Laharighat in the Nagaon district which contains the name of Shongser Ali son of Kabu at Sl. No. 473. It is claimed that Shongser Ali is the father of the petitioner. It is also stated that the petitioner subsequently got married to Nurul Islam also of village Sitalmari Colony and the younger brother of Nurul Islam namely, Sahidul Islam who is also the Gaonburah of village Sitalmari Colony had deposed before the Tribunal that the husband of the petitioner namely Nurul Islam is his elder brother and therefore he knows the fact that the petitioner is the daughter of Shongser Ali of the same village.

4. Jaynal Abdin son of late Songsher Ali had also deposed before the Tribunal as DW2 stating that the petitioner Jamina Khatun is his sister and daughter of Songhser Ali. The petitioner in order to establish that Jaynal Abdin is the son of Songhser Ali may produce any voters' list of village Sitalmari Colony in which both the names may appear together.

5. It is noticed that both DW2 and DW3 have not been cross-examined by the State authorities.

6. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 5, Morigaon to enable the State authorities to cross-examine the DW2 and DW3. If the evidence rendered by the DW2 and DW3 remains unrebutted, it would have to be accepted that the petitioner had discharged the burden under Section 9 of the Foreigners Act, 1946 to prove that she is an Indian citizen. The State respondents in the Home Department of the

Government of Assam through the Superintendent of Police(B), Morigaon may also make their own verification and submit the report before the Tribunal.

7. The petitioner relies upon a land document in respect of a plot of land at village Hatimuriya wherein the name of Jamina Khatun had been mutated, amongst others, in place of Shangsher Ali. But again there remains for a decision as to whether Shangsher Ali who had purchased the land at village Hatimuriya and Shongser Ali of the voters' list of 1965 of village Sitalmari Colony are one and the same person. The petitioner may render any further evidence in respect of the same.

8. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 28.11.2018 in Case No. F.T.(D) 135/2015 (New Number) corresponding to F.T.(D) 1207/12 (Old Number) and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 30.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant