

GAHC010168922020



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

Case No. : WP(C)/4978/2020

HABIJA KHATUN @ HAFIJA KHATUN
D/O. LT. IBRAHIM ALI @ IBRAHIM SHEIKH, W/O. MUSLEM UDDIN @
MUSLEM ALI, VILL. RAYPUR, P.S.BORBHOG, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, THE
GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK
MARG, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE DY. COMMISSIONER BARPETA

P.O. AND DIST. BARPETA

ASSAM
PIN-781301.

4:THE SUPDT. OF POLICE (BORDER)
BARPETA
P.S. AND DIST. BARPETA
ASSAM
PIN-781301.

5:THE ELECTION COMMISSIONER OF INDIA

THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI-01.

6:THE STATE CO-ORDINATE OF NATIONAL REGISTRATION OF CITIZEN
(NRC)

ASSAM
BHANGAGARH
GUWAHATI-05

Advocate for the Petitioner : MR N AHMED

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

07.06.2023

(A.M. Bujor Barua, J)

Heard Mr. N Ahmed, 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 authorities in the NRC, Mr. J Payeng, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Habija Khatun @ Hafija Khatun had been referred to the Foreigners Tribunal No. 8, Barpeta for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of F.T. Case No. 179/2018, wherein an opinion dated 30.04.2019 was given that the petitioner is a foreigner. Being

aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1965 of village Raypur in the Barpeta district, which contains the name of Ibrahim Ali son of Umed at serial No. 111. The name of Ibrahim Ali also appears in the voters list of 1970 along with his wife Chakina Khatun. Reliance is placed on the voters list of 1958 of village Raypur, which contains the name of Ibrahim Ali son of Umed Ali at serial No. 77 and that of Ismail Hussain son of Ibrahim at serial No. 80 and both of them are shown to be residing in the same House No. 34.

4. Ismail Hussain had rendered evidence as DW-2 before the Tribunal deposing that the petitioner Hafija Khatun is his sister, who in fact is the daughter of Ibrahim Ali as the voters list of 1965 and 1958 of village Raypur.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1958 and 1965 of village Raypur and also to enable the Home Department to further cross-examine the DW-2 to extract the veracity of his evidence rendered that the petitioner Hafija Khatun is his sister and also daughter of Ibrahim Ali of the voters list of 1958 and 1965 of village Raypur. The respondents in the Home Department may also make their own verification and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon. The petitioner may be allowed to produce any further materials, if so advised.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.04.2019 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the concerned Foreigners Tribunal on 13.07.2023. Till the reasoned order is passed, no coercive action be taken

against the petitioner.

8. The writ petition is allowed as indicated above.
9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant