

GAHC010173312019



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

Case No. : WP(C)/5345/2019

PRIYA BISWAS @ PRIYABALA BISWAS
D/O- LT SADHU CHARAN BISWAS, R/O- 2 NO. GUNAMARA, P.S.
DHARAMTUL, DIST- MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
THROUGH THE ADDL. CHIEF SECY.
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
ASSAM SECRETARIAT
GHY
ASSAM
PIN- 781006

3:THE MEMBER
FOREIGNERS TRIBUNAL NO. 2
MORIGAON
MORIGAON
ASSAM
PIN- 782105

4:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
ASSAM- 782105

5:THE DY. COMMISSIONER
OFFICE OF THE DY. COMMISSIONER

MORIGAON
ASSAM- 782105

6:THE OFFICER-IN-CHARGE
OF BHURAGAON P.S.
DIST- MORIGAON
ASSAM
PIN- 782121

7:THE STATE COORDINATOR
OFFICE OF THE STATE COORDINATOR
NRC ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005

8:THE ELECTION COMMISSIONER OF INDIA
ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 11000

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 03.05.2023
(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 7, being the Union of India and the State Coordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 3, 4 and 6, being the authorities in the Home

Department; Ms. M. Dutta, learned counsel for the respondent No. 5, being the Deputy Commissioner, Morigaon and Mr. A.I. Ali, learned counsel for the respondent No. 8, being the Election Commission of India.

2. The petitioner Priya Biswas @ Priyabala Biswas was referred to the Foreigners' Tribunal No. 1, 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 accordingly Case No. F.T.435/2010 was registered. The Tribunal rendered its opinion dated 31.10.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Before the Tribunal, the petitioner took a stand that in respect of her father Sadhucharan Biswas son of late Gopal Biswas, a proceeding before the Foreigners' Tribunal No. 4, Morigaon was held resulting in registration of F.T. (C) Case No. 235/2016 wherein a judgment and order dated 30.07.2016 was passed declaring Sadhucharan Biswas and his other family members namely, Sandhyarani Biswas (wife), Rabindra Biswas (son), Khushi Mohan Biswas (son), Priya Biswas (daughter), Fulmala Biswas (daughter) of village Thengbhanga to be Indian citizens. The Tribunal rejected the claim of res judicata by the petitioner by providing that Exhibit A produced by the petitioner has no credence in her case as the linkage with the projected father is not established.

3. When a stand of res judicata is taken, the Tribunal is required to look into whether the person referred in the earlier case and the person referred in the subsequent case are one and the same person. The Tribunal is not required to go into the merits of the claim made by the person concerned in the subsequent matter and then arrive at a conclusion that no credence can be given to the earlier judgment. As there is a definite finding that Sadhucharan Biswas son of late Gopal Biswas along with his daughter Priya Biswas is an Indian citizen, the

Tribunal is now required to look as to whether Priya Biswas in paragraph 4 of the judgment and order dated 30.07.2016 in F.T.(C) Case No. 235/2016 and Priya Biswas @ Priyabala Biswas who is the petitioner proceedee in this writ petition are one and the same person. If the conclusion to be arrived would be that they are one and the same person, the principle of res judicata would be applicable as laid down by the Hon'ble Supreme Court in the case of *Abdul Kuddus Vs. Union of India & Ors.*, reported in (2019) 6 SCC 604 and accordingly the subsequent reference made against the petitioner in Case No. F.T.435/2010 would be liable to be dismissed and thereafter the petitioner be declared to be an Indian citizen.

4. Accordingly, we remand the matter back to the Foreigners' Tribunal No. 1, Morigaon for the aforesaid purpose. The petitioner to appear before the Tribunal on 14.06.2023.

Writ petition stands disposed of as indicated above.

Send back the LCRs forthwith.

J U D G E

J U D G E

Comparing Assistant