

GAHC010177022018



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

Case No. : WP(C)/5486/2018

SAHERA BIBI
D/O- LT SAPER UDDIN SK, W/O- AMJAD ALI, R/O- VILL-
MADHUSOULMARI PT-II,, PO MADHUSOULMARI, P.S. GAURIPUR, DIST-
DHUBRI, ASSAM

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-01

3:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

4:THE DY. COMMISSIONER

DHUBRI
DIST- DHUBRI
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
DIST- DHUBRI

ASSAM

6:THE STATE CO-ORDINATOR OF NRC
ASSAM
PO AND PS BHANGAGARH
GHY-5
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. S ISLAM

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

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

ORDER

Date : 02.06.2023
(A.M. Bujor Barua, J)

Heard Mr. S. Islam, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. T. Pegu, learned counsel for the respondent No. 2, being the authorities in the Election Commission of India; Ms. A. Verma, learned counsel for the respondents No. 3 and 5, being the authorities in the Home Department and Mr. N.K. Das, learned counsel for the respondent No. 4, being the Deputy Commissioner, Dhubri .

2. The petitioner Sahera Bibi was referred to the Foreigners' Tribunal No. 5, Dhubri 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. FT-5/GPR/513/2017 was registered. The Tribunal had rendered its opinion dated 16.07.2018 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 1966 of village Dharmasala Pt. III, Mouza Dhubri in the Dhubri district which contains the name of Safer Sk son of Nilmamud at Sl. No. 192. The petitioner also relies upon the voters' list of 1979 of village Dharmasala Pt. III, Mouza Dhubri in the Dhubri district which contains the name of Safer Prodhani son of Nilmamud at Sl. No. 227 and that of Asia Bibi wife of Safer at Sl. No. 228 and both are shown to be residing in the same house No. 67. It is claimed that Safer Prodhani is the father and Asia Bibi is the mother of the petitioner. Asiya Bewa had rendered evidence before the Tribunal as DW2 wherein she stated that she is the wife of Chaper Prodhani and that Sahera Bibi is her daughter and she has two sons and three daughters with Chaper Prodhani as the father.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 5, Dhubri to examine the aforesaid voters' lists of 1966 and 1979 of village Dharmasala Pt. III, Mouza Dhubri in the Dhubri district as well as the evidence rendered by DW2 Asiya Bewa. The petitioner to produce the complete voters' lists of 1966, 1970 and 1979 of village Dharmasala Pt. III, Mouza Dhubri in the Dhubri district for examination of the Tribunal. The State respondents in the Home Department may cross-examine the DW2 to extract the veracity of her evidence that the petitioner is her daughter as well as may make any further verification, if so advised and submit a report the Tribunal.

5. 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 16.07.2018 in Case No. FT-5/GPR/513/2017 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 10.07.2023. 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