

GAHC010180362021



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

Case No. : WP(C)/5812/2021

SAJIRON NESSA @ SOJIRON NESSA @ SOJIBON NESSA
D/O- MOTUL SK @ MOTIBAR RAHMAN, W/O- ABDUL MAJID, R/O- VILL-
126 NO. UZIRAR CHAR, P.S.- PANCHARATNA, DIST.- GOALPARA, 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
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S.ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL NO.8
GOALPARA
ASSAM
DIST.- GOALPARA
PIN- 783101

6:THE DY. COMMISSIONER
GOALPARA
P.O. GOALPARA
P.S. GOALPARA
DIST.- GOALPARA
ASSAM
PIN- 783101

7:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
P.O. GOALPARA
P.S. GOALPARA
DIST.- GOALPARA
ASSAM
PIN- 783101

8:THE OFFICER-IN-CHARGE OF PANCHARATNA P.S.
P.O. GOALPARA
DIST.- GOALPARA
ASSAM
PIN- 78310

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 : 28.07.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities

under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 5, 7 and 8 being the authorities under the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 6 being the Deputy Commissioner, Goalpara.

2. The petitioner Sajiran Nessa@ Sojiron Nessa @ Sojibon Nessa had been referred to the Foreigners' Tribunal No. 8, Goalpara for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T. (8) No. 895/2018. The Tribunal rendered an opinion dated 19.03.2021 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Dubapara Luptuchar which contains the names of Motul Seikh S/O Dukhi Seikh at Sl. No. 143 and that of Gole Nessa W/O Motul at Sl. No. 144 where both are residing in the same house No. 52. It is claimed that Motul Seikh is the father and Gole Nessa is the mother of the petitioner. To substantiate that the petitioner Sajiran Nessa is the daughter of Motul Seikh evidence had been rendered by Gole Nessa as DW2 showing her to be the wife of Motul Sk and resident of Uzirar Char wherein it is deposed that the petitioner Sajiran Nessa is her daughter.

5. As the name of Gole Nessa appears along with Motul Seikh in the voters' list of 1966 it can be accepted that Motul Seikh would be a citizen of India. The evidence of DW2 establishes that Sajiran Nessa is the daughter of Motul Seikh and from such point of view also it can be accepted that the petitioner has

discharged the burden under Section 9 of the Foreigners' Act, 1946.

6. A question would remain that Gole Nessa as DW2 has described her residence to be Uzirar Char whereas the voters' list of 1966 is of village Dubapara Luptuchar.

7. Ms. D Ghosh, learned counsel for the petitioner explains that the voters' list of 1985 would clarify the situation inasmuch as Dubapara Luptuchar and Uzirar Char are adjacent villages which had a common voters' list in the year 1966 but in the year 1985 it was split and indicated as the voters' list of Dubapara Luptuchar and Uzirar Char. Accordingly, it is sought to be established that Gole Nessa W/O Motul Seikh R/O Uzirar Char is in fact Gole Nessa W/O Motul Seikh of the voters' list of 1966 of village Dubapara Luptuchar.

8. In view of the above, the matter stands remanded back to the Tribunal to examine the aforesaid voters' lists and also take note of the explanation regarding the aspect that the voters' list of 1966 also includes the village Uzirar Char and that Gole Nessa W/O Motul Seikh has rendered evidence as DW2. The petitioner to produce the Aadhaar Card of DW2 Gole Nessa to establish that the person who has deposed before the Tribunal is in fact Gole Nessa W/O Motul Seikh of the 1966 voters' list of village Dubapara Luptuchar/Uzirar Char. The respondents in the Home Department may make their own enquiry and verification and thereafter, submit a report before the Tribunal. As prayed for by Mr. G Sarma, learned counsel for the Home Department the DW2 Gole Nessa may be further cross examined by the Home Department subject to the condition of the DW2 as of present. Upon doing the needful, a reasoned order be passed by the Tribunal.

9. The petitioner to appear before the Tribunal on 25.08.2023.

10. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 19.03.2021 passed in F.T.(8) Case No. 895/2018 and if against, consequence under the law is applicable to the petitioner.

11. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant