

GAHC010182962022



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

Case No. : WP(C)/5957/2022

KESHMATI NAMASUDRA
D/O- LATE NEMAI BISWAS,
W/O- MAHANANDA NAMASUDRA,
R/O- VILLAGE KHARGHULI, RAJABARI, PANIKHETI,
P.S- PRAGJYOTISHPUR,
DIST- KAMRUP (M), ASSAM

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

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

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S ROAD.
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
KAMRUP (M)
P.O- PANBAZAR
DIST- KAMRUP (M)
ASSAM
PIN-781001

6:THE FOREIGNERS TRIBUNAL NO -4
KAMRUP (M)
GUWAHATI
DIST- KAMRUP (M)
ASSAM
PIN-781007

7:THE DEPUTY COMMISSIONER OF POLICE (B)
GUWAHATI CITY
KAMRUP (M)
P.O- PANBAZAR
DIST- KAMRUP (M)
ASSAM
PIN-781001

8:THE OFFICER IN CHARGE
OF PRAGJYOTISHPUR POLICE STATION
P.O- CHANDRAPUR
DIST- KAMRUP (M)
ASSAM
PIN-78115

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

Date : 03-04-2023

JUDGMENT & ORDER (ORAL)

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, 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. T. Pegu, learned counsel for the Election Commission of India and Mr. NK Das Das, learned counsel for the Deputy Commissioner, Kamrup(M).

2. The petitioner Keshmati Namasudra had been referred to the Foreigners Tribunal No. 4, Kamrup(M) 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 Case No. FTK(M)-4th -1345/2017, wherein an opinion dated 30.07.2022 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 1971 of village Dipujijan Pam, Mouza mayang in the erstwhile Nagaon district presently Morigaon district, which contains the name of Nimai Biswas son of Ratanmani at serial No. 676 and Suradhani Biswas wife of Nimai at serial No. 677 and both of them are shown to be residing in the same house No. 7. Subsequent voters list containing the name of Nimai Biswas and Suradhani Biswas in respect of the years 1985, 1997, 2010 are also available in respect of the same village Dipujijan Pam. The petitioner relies upon a certificate of the Secretary of Pachim Mayong Gaon Panchayat dated 29.06.2015, which contains the information that the petitioner Keshmati Biswas is the daughter of late Nimai Biswas and Shudhani Biswas of village Dhipujijan Pam. The Secretary of the Gaon Panchayat had also been examined as DW-4, wherein in the cross examination, he had stated that he had issued the certificate on the basis of some legacy data of the father of the petitioner as well as some certificate issued by the Government Gaon Bura.

4. In the certificate itself, it is written that the certificate issued is based upon the evidence placed before him. In other words, we have to accept that the certificate as well as the evidence of the Secretary of the Pachim Mayong Gaon Panchayat is on a hear say basis and other materials that were placed before him rather than it being a certificate either from his own knowledge or a certificate on the basis of the official records maintained by the Secretary.

5. Accordingly, the certificate as well as the evidence of the DW-4 being the Secretary of the Gaon Panchayat is rejected. If the Secretary seeks to base his certificate as well as his evidence upon certain materials that were placed before him and if such materials indicate/contain any information which the petitioner would like to rely upon, it is for the petitioner to place such materials directly before the Tribunal rather than taking the indirect method of placing it before the Secretary of the Gaon Panchayat who in turn will render evidence before the Tribunal.

6. However, the mother of the petitioner Suradhani Biswas had rendered evidence as DW-2, wherein in her evidence on affidavit in paragraph-8 had been stated that she gave birth four children namely Pushpa biswas, Keshmati being the opposite party, Niranjani and Swapna @ Rekha and accordingly rendered the evidence that Keshmati is her daughter. In the cross-examination by the State authorities, the DW-2 Suradhani Biswas was not confronted with any question that Keshmati the proceedee writ petitioner is not her daughter.

7. Accordingly, we see no reason as to why not to accept the evidence of DW-2 Suradhani Biswas that the petitioner Keshmati is her daughter.

8. Further evidence had also been rendered by Niranjani Biswas son of Nimai Biswas and the name of Niranjani Biswas appears along with Suradhani Biswas

in the voters list of 1997.

9. In view of the materials being available on record, the matter is remanded back to the Tribunal to examine as to whether the voters list of 1971 containing the name of Nimai Biswas and Suradhani Biswas, which establishes their citizenship and the further evidence rendered by DW-2 Suradhani Biswas as well as the DW-3 Niranjan Biswas that the petitioner is the daughter of Nimai Biswas and Suradhani Biswas and thereupon pass a reasoned order thereon.

10. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.01.2019. If the reasoned order goes against the petitioner, consequence as per law shall follow.

11. The petitioner shall appear before the Foreigners Tribunal No. 4, Kamrup(M) on 11.05.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

12. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant