

GAHC010185452019



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

Case No. : WP(C)/5825/2019

MINA SAHA
W/O- LT SUBAL SAHA, D/O.- LT. KANDU CHANDRA ARYA, R/O. NK
DARRANGA, P.S.- TAMULPUR, DIST.- BAKSA, BTC, ASSAM, PIN- 781367.

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.- 781006.

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
GUWAHATI
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL

BAKSA
TAMULPUR
P.O. AND P.S. TAMULPUR
DIST. BAKSA
ASSAM
PIN- 781367.

6:THE DEPUTY COMMISSIONER
BAKSA
P.O. AND P.S.- BAKSA
DIST. BAKSA
ASSAM
PIN- 781372.

7:THE SUPERINTENDENT OF POLICE (BORDER)
BAKSA
P.O. AND P.S.- BAKSA
DIST.- BAKSA
ASSAM
PIN- 781372.

8:THE OFFICER-IN-CHARGE OF TAMULPUR POLICE STATION
P.O. TAMULPUR
DIST- BAKSA
ASSAM
PIN- 781367

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

04.08.2023

[Achintya Malla Bujor Barua, J.]

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned counsel appearing for the respondent Nos.1 and 4; Mr. G. Sarma,

learned special counsel, FT, appearing for respondent Nos.2, 5, 7 and 8; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.3 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.6.

2. The petitioner Mina Saha had been referred to the Foreigners' Tribunal, Baksa, Tamulpur, Assam for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946 resulting in registration of F.T. Case No.2698/BAKSA/2016. The Tribunal rendered an opinion dated 25.02.2019 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding reliance is placed on the voters list of 1966 of village Balikuri Nonke, which contains the names of Kandu Chandra Arya S/o Fatik Arya at Sl.No.720 and Mista Bala Arya W/o Kandu Chandra at Sl.No.721. It is claimed that Kandu Chandra Arya is the father and Mista Bala Arya is the mother of the petitioner. Kandu Chandra Arya is shown to be 50 years in the voters list of 1966. Reliance is also placed upon a notice dated 20.11.1956 issued by the Sub-Divisional Officer, Barpeta to Kandu Arya S/o Fatik Arya requiring him to return the rehabilitation loan of Rs.935/- which had taken from the Government authorities. Further reliance is placed upon the certificate on 19.10.1955 by the General Secretary of the All Assam Refugee Association, Barpeta District Branch, wherein it is certified that Kandu Arya S/o Fatik Arya from Moymonsing district is presently residing at village Balikuri Nonke. The evidentiary value of the certificate dated 19.10.1955 issued by the General Secretary, All Assam Refugee Association, Barpeta District Branch would be subjected to process of law as to whether it is admissible in evidence inasmuch as it is a certificate issued by a private authority rather than being any public authority. But however the notice dated 20.11.1956 makes it discernible that Kandu Arya S/o Fatik Arya did exist in the State of Assam in village Balikuri as on the said date. To establish that Kandu Arya of Balikuri Nonke village is the father of the petitioner, reliance is placed upon a Jamabandi in respect of a plot of land at village Balikuri Nonke, which shows that amongst others the name of Mina Arya D/o Kanduram Arya had been

mutated in place of Kanduram Arya in respect of the plot of land at village Balikuri Nonke. By the mutation in favour of the petitioner, the petitioner claims that the burden under Section 9 has been discharged inasmuch as the 1966 voters list of village Balikuri Nonke as well as the notice dated 20.11.1956 from the Sub-Divisional Officer, Barpeta to establish that Kandur Arya S/o Fatik Arya is a citizen.

4. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966 and 1970 as well as the Jamabandi in favour of the petitioner and thereafter pass a reasoned order thereof. The evidence of the Gaonburah (DW-3) which is also relied upon is not accepted inasmuch as the DW-3 is noticed to be 37 years when the evidence was rendered and the writ petitioner would have been 59 years meaning thereby that the DW-3 seeks to give evidence of events that may have taken place even prior to his birth. The respondents in the Home Department may make their own verification and submit a report before the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 25.02.2019 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 28.08.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. Send back the LCR immediately.

7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant