

GAHC010193472017



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

Case No. : WP(C)/1190/2017

HAMIDA KHATUN
D/O ABDUL HEKIM W/O NURUL ISLAM VILL- DURABANDHI, P.S.
MOIRABARI DIST. MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF INDIA,
HOME DEPARTMENT, NEW DELHI-1, INDIA.

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

3:THE DEPUTY COMMISSIONER

MORIGAON
DIST. MORIGAON
ASSAM

4:THE SUPERINTENDENT OF POLICE B

MORIGAON
DIST. MORIGAON
ASSAM.

5:THE OFFICER-IN-CHARGE

MOIRABARI POLICE STATION
P.S. MOIRABARI

DIST. MORIGAON
ASSA

Advocate for the Petitioner : MDE AHMED

Advocate for the Respondent : GA, ASSAM

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

ORDER

11.04.2023

[A.M.Bujor Barua, J.]

Heard Mr. Z. Hammad, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent no. 1; Mr. G. Sarma, learned counsel for the respondent no. 2; and Ms. M. Dutta, learned counsel for the respondent no. 3.

2. The petitioner Hamida Khatun had been referred to the Foreigners' Tribunal 5th Morigaon, 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 F.T.(D) 403/2015 (New) corresponding to F.T.(D) 30/2011 (Old), wherein an opinion dated 30.11.2016 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ petition the petitioner relies on the Voters' List of 1960 of village Chenimari Mouza – Laharighat P.S. Laharighat in the Nagaon district, which contains the name of Abdul Hekim, son of Tareh Uddin at serial no. 911. Abdul Hekim son of Tareh Uddin @ Tahir Sheikh of village Dakhin Chenimari P.S. Laharighat presently in the Nagaon district had rendered evidence before the

Tribunal as DW2 stating that the petitioner Hamida Khatun is his daughter who was born at village Dakhin Chenimari. DW2 also referred to the Voters' List of 1966 of village Dakhin Chenimari which contains the name of Tahir Sheikh at serial no. 367 and states that Tahir Sheikh is his father, which in other words would be the grandfather of the proceedee Hamida Khatun.

4. We have noticed that DW2 had not been cross-examined by the State authorities. Although the Tribunal had put certain questions to DW2 but the evidence rendered that the petitioner Hamida Khatun is the daughter of DW2 had not been rebutted in any manner.

5. Mr. G. Sarma, learned counsel for the Home Department submits that the Home Department also deserves an opportunity to cross-examine the DW2. If the evidence of DW2 remains un-rebutted it has to be accepted that the petitioner had discharged the burden to prove that she is a citizen of India.

6. The matter is remanded back to the Foreigners' Tribunal 5th Morigaon to enable the Home Department to cross-examine the DW2, Abdul Hekim. The Home Department shall also verify as to whether the DW2, Abdul Hekim and Abdul Hekim of the Voters' List of 1971 of village Chenimari are one and the same person.

10. The petitioners to appear before the Tribunal on 29.05.2023.

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

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant