

GAHC010195022019



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

Case No. : WP(C)/6034/2019

ALO KARMAKAR @ ALO RANI KARMAKAR
W/O- LATE SWAPAN KARMAKAR, D/O- LATE NARAYAN CHOUDHURY,
R/O- BARPETA ROAD TOWN, WARD NO.8, MOUZA- GOBARDHANA, P.S-
BARPETA, DIST- BARPETA, PIN- 781315, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY, MIN 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
GUWAHATI- 781006

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

4:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH

GHY
ASSAM
PIN- 781005

5:THE DEPUTY COMMISSIONER
BARPETA
P.O AND P.S- BARPETA
DIST- BARPETA
ASSAM
PIN- 781314

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O AND P.S- BARPETA
PIN- 781315

7:THE OFFICER IN CHARGE
BARPETA POLICE STATION
DIST- BARPETA
ASSAM
PIN- 78131

Advocate for the Petitioner : MS D BORGOHAIN

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

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

ORDER

Date : 23.05.2023
(A.M. Bujor Barua, J)

Heard Ms. D. Borgohain, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Coordinator of NRC respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 6 and 7, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the

authorities in the Election Commission of India and Ms. K. Phukan, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Alo Karmakar @ Alo Rani Karmakar was referred to the Foreigners' Tribunal No. 10, Barpeta 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 F.T. Case No. 120/2017 was registered. The Tribunal rendered its opinion dated 31.10.2018 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 1965 of Sahar Barpeta Town Ward No. 2, Mouza Gobardhana in the present Barpeta district which contains the name of Narayan Choudhury son of Harish Chandra at Sl. No. 1492 and that of Lakhi Rani Choudhury wife of Narayan at Sl. No. 1493 and both are shown to be residing in the same house No. 443. The petitioner also relies upon the voters' list of 1985 of Barpeta Road Ward No. 8, Mouza Gobardhana in the Barpeta district which contains the name of Lakhi Bala Karmakar wife of Narayan at Sl. No. 195 and that of Alo Rani Karmakar daughter of Narayan at Sl. No. 196 and both are shown to be residing in the same house No. 228.

4. It is stated that Narayan Choudhury in the meantime had died but after his death the name of Lakhi Rani Choudhury wife of Narayan had entered in the voters' list as Lakhi Bala Karmakar wife of Narayan by taking the maiden name. Accordingly the name of her daughter is also stated to be Alo Rani Karmakar. The petitioner claims that Alo Rani Karmakar of the voters' list of 1985 of Barpeta Road Ward No. 8 is the petitioner herself.

5. As the name of the petitioner appears along with Lakhi Bala Karmakar in

the voters' list of 1985 whereas Lakhi Bala Karmakar and Lakhi Rani Choudhury of the voters' list of 1965 are one and the same person, the petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 has been discharged. The petitioner has filed an affidavit stating that Lakhi Rani Choudhury of the voters' list of 1965 and Lakhi Rani Karmakar of the voters' list of 1985 are one and the same person.

6. Without arriving at any conclusion we leave the question and remand the matter back to the Foreigners' Tribunal No. 10, Barpeta to examine through any other relevant and cogent evidence as to whether Lakhi Rani Choudhury of the voters' list of 1965 of Sahar Barpeta Town Ward No. 2 and Lakhi Bala Karmakar of the voters' list of 1985 of Barpeta Road Ward No. 8 are one and the same person. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Barpeta may also make their own verification on the factual issue as to whether Lakhi Rani Choudhury of the voters' list of 1965 of Sahar Barpeta Town Ward No. 2 and Lakhi Bala Karmakar of the voters' list of 1985 of Barpeta Road Ward No. 8 are one and the same person and submit a report before the Tribunal. The petitioner may also adduce any further evidence before the Tribunal, if so advised.

7. 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 31.10.2018 in F.T. Case No. 120/2017 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 07.07.2023. 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