

GAHC010200642017



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

Case No. : WP(C)/5215/2017

AYJAN KHATUN @ AIZAN KHATOON
W/O MOJUDDIN D/O AKKAS ALI @ AKKAS ALI SHEIKH R/O VILL-
LALMATI GANESHPUR, P.S. ABHAYAPURI, DIST. BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT.OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWNA, TILOK MARG, NEW DELHI-1.

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

3:THE SUPERINTENDENT OF POLICE

BORDER
BONGAIGAON
P.O. and DIST. BONGAIGAON
ASSAM
PIN - 781301.

4:THE DEPUTY COMMISSIONER

BONGAIGAON
P.O. and DIST BONGAIGAON
ASSAM
PIN - 781301

Advocate for the Petitioner : MR.N AHMED

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 06.06.2023
(A.M. Bujor Barua, J)

Heard Mr. N. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1, being the Union of India. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 3, being the authorities in the Home Department and Ms. K. Phukan, learned counsel for the respondent No. 4, being the Deputy Commissioner, Bongaigaon.

2. The petitioner Ayjan Khatun @ Aizan Khatoon was referred to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri 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 BNGN/FT/CASE NO.2178/08 was registered. The Tribunal had rendered its opinion dated 11.07.2017 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 1966 of village Kuchbari Pt. I, Circle Srijangram in the Goalpara district which contains the name of Akkash Ali son of Noimuddin at Sl. No. 187 and that of Moriyam Nessa wife of Akkash at Sl. No. 193 and both are shown to be residing in the same house No. 39. Similar information is also available in the voters' list of 1970 of village Kuchbari Pt. I, Circle Srijangram in the Goalpara district as

regards the names of Akkash Ali and Moriyam Nessa. The petitioner also relies upon the voters' list of 1997 of village Kuchbari Pt. I in the Bongaigaon district which contains the names of Md. Akkas Ali son of Noiyamuddin at Sl. No. 206, Mossa. Moriyam Nessa wife of Akkas Ali at Sl. No. 207, Md. Mohir Uddin son of Akkas Ali at Sl. No. 208 and Md. Soukat Ali son of Akkas Ali at Sl. No. 209 and all of them are shown to be residing in the same house No. 62(A). It is claimed that Md. Mohir Uddin son of Akkas Ali and Md. Soukat Ali son of Akkas Ali are two brothers of the petitioner where their names appear together along with Md. Akkas Ali and Mossa. Moriyam Nessa in the voters' list of 1997 of village Kuchbari Pt.I. Soukat Ali and Mohir Uddin had rendered evidence before the Tribunal as DW2 and DW3 respectively wherein both had stated that the petitioner Ayjan Khatun is their sister being the daughter of Akkas Ali and Moriyam Nessa.

4. In view of such specific evidence being rendered by DW2 and DW3 where the names of DW2 and DW3 appear along with Akkas Ali and Moriyam Nessa in the voters' list of 1997 of village Kuchbari Pt. I and further the names of Akkash Ali and Moriyam Nessa appear in the voters' list of 1966 of 1970 of village Kuchbari Pt. I, we remand the matter back to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri to examine the implication under law of the voters' list of 1966, 1970 and 1997 of village Kuchbari Pt.I as well as the evidence rendered by DW2 and DW3. The State respondents in the Home Department may cross-examine DW2 and DW3 to extract the veracity of their deposition that Ayjan Khatun is their sister being the daughter of Akkas Ali and Moriyam Nessa of village Kuchbari Pt.I. The State respondents in the Home Department through the Superintendent of Police(B), Bongaigaon may also make their own verification, if so advised and thereafter submit a report before the Tribunal.

5. 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 11.07.2017 in Case No. BNGN/FT/CASE NO.2178/08 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 12.07.2023. 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