

GAHC010205322019



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

Case No. : WP(C)/6620/2019

SUKURJAN NESSA
D/O- LT. BHAJAN ALI, W/O- LT. TARAF ALI, R/O- VILL. SIDHUNI, MOUZA-
JANIA, P.S. BAGHBAR, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH- THE SECRETARY, TO THE GOVT. OF INDIA, MINISTRY OF
HOME AFFAIRS, GRIHA MANTRALAYA, NEW DELHI.

2:THE STATE OF ASSAM
THROUGH- THE SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

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

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI- 781005.

5:THE DEPUTY COMMISSIONER
BARPETA
P.O. BARPETA
DIST.- BARPETA

ASSAM. PIN CODE- 781301.

6:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
P.O. BARPETA
DIST.- BARPETA
ASSAM. PIN CODE- 781301

Advocate for the Petitioner : MR. S C BISWAS

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

22.06.2023

(A.M. Bujor Barua, J)

Heard Mr. FA Hasan, 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. G Sarma, 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 Ms. K Phukan, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Sukurjan Nessa had been referred to the Foreigners Tribunal No. 4, Barpeta for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No. 530/2016, wherein an opinion dated 29.05.2019 was rendered declaring the petitioner to be a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1966 of

village No. 4 Bhera, police station- Baghbar, Mouza-Jania in the Barpeta district, which contains the name of Bhajan Ali son of Mohammad at serial No. 111 and Jahiran Nessa wife of Bhajan at serial No. 112 where both of them are shown to be residing in the same house No. 32. It is stated that Bhajan Ali is the father of the petitioner. The voters list of 1970 of village No. 4 Bhera also contains the name of Bhajan Ali son of Mahammad at serial No. 119 and Jahiran Nessa wife of Bhajan at serial No. 120. The petitioner also refers to the Jamabandi in respect of a plot of land at village No. 4 Bhera, which contains the order of the Circle Officer dated 04.01.1981, by which the name of Bhajan Ali, Nakumuddin, Abul Hasen, Rahijuddin, all sons of Mahammad Ali had been substituted and in the Jamabandi at serial No. 8, the name of Abul Hasen son of Mahammad Ali appears. Abul Hasen @ Abdul Hoque had deposed before the Tribunal as DW-2 and in his evidence he stated that the petitioner Sukurjan Nessa is the daughter of Bhajan Ali, by claiming the relationship that Abdul Hoque @ Abul Hasen is the brother of Bhajan Ali and therefore, he has the means of having special knowledge on the subject.

4. But it is noticed that in the Jamabandi as per the order of the Circle Officer dated 04.01.1981, the name of Bhajan Ali was mutated in place of Mahammad Ali along with Nukumuddin Abul Hasen and Rahijuddin all being sons of Mahammad Ali and Nayanjan Bewa being the wife of Mahammad Ali. But no voters list is produced of the period 1966 or 1970 of village No. 4 Bhera, which may contain the name of Mahammad Ali along with Bhajan Ali and which may also indicate as to who is the wife of Mahammad Ali. It is further noticed that DW-2 also claims the name of Abul Hasen @ Abdul Hoque and seeks to explain that both are the same person. But, no material is produced before the Court which may indicate that Abul Hasen @ Abdul Hoque, who had deposed as DW-2

are one and the same person.

5. For further clarification, we remand the matter back to the Tribunal where the petitioner shall first bring relevant material to show that Abul Hasen and Abdul Hoque who had deposed as DW-2 are one and the same person. The respondents in the Home Department may make their own verification and submit a report before the Tribunal on the acceptability of the claim of the petitioner that Abul Hasen of the Jamabandi and DW-2 Abdul Hoque are one and the same person and submit a report before the Tribunal. The State through the Home Department may cross-examine the DW-2 Abdul Hoque as may be advised. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 29.05.2019 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 25.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant