

GAHC010207312022



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

Case No. : WP(C)/7213/2022

FATIKJAN NESSA
D/O. LT. AJGAR ALI, W/O. ABDUL BAREK, VILL. PAMPARA, P.S.
KACHUMARA, MOUZA- BAGURIBARI, DIST. BARPETA, ASSAM.

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
GUWAHATI-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 NO.7TH

BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

6:THE DEPUTY COMMISSIONER

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

7:THE SUPDT. OF POLICE (B)

BARPETA
P.O. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

8:THE OFFICER IN CHARGE OF KACHUMARA POLICE STATION

P.O. KACHUMARA
DIST. BARPETA
ASSAM
PIN-781302

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

08.06.2023

(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Barpeta as well as the Officer-in-Charge Kachumara Police Station, Barpeta and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Fatikjan Nessa was referred to the Foreigners Tribunal No.7 Barpeta for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of Case No.F.T.530/2017 corresponding to R/IM(D)T Case No.2822/97 wherein an opinion dated 11.08.2022 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Suntoli P.S. Boko in the Kamrup district which contains the name of Ajgor Ali son of Tamesh at Sl.No.126 and that of Suhagi Bibi wife of Ajgor at

Sl.No.227(which may be read as 127). The names of Ajgor Ali and Suhagi appear together in the voters list of 1970, 1979 and 1985 of village Suntoli. In the voters list 1997 of village Suntoli, the name of Sehagi Bewa wife of Ajgar appears at Sl.No.251 and it is stated that in the meantime, Ajgor Ali died. The name of Seyagi Bewa also appears in the voters list of 2005 and 2010 of village Sontoli. In the voters list of village Sontoli for the year 1985, the name of Juran Ali son of Ajgar appears along with Ajgar Ali and Suhagi Bibi, where he is shown to be residing in the same house as that of Ajgar Ali. The voters list of 1997 also contains the name of Juban Ali son of Ajgar along with Sehagi Bewa.

5. Juran Ali son of Azgar Ali had rendered evidence as DW-2 wherein in the 2nd paragraph 1, it is stated that the petitioner is his younger sister who was born and brought up at village Sontali and that he was also born and brought up at village Sontali in the Kamrup(R) district. In paragraph 2, it is stated that the petitioner got married to one Abdul Barek, son of Rahimuddin of village Pampara in the Barpeta district and she is living with her husband. In cross examination, no question has been put to DW-2 to confront the evidence that the petitioner is the younger sister who was born and brought up at village Sontali. The other evidence of DW-2 is also consistent as regards the appearance of the names of Ajgar Ali, his wife Suhagi Bibi and that of Juran Ali in the various voters list.

6. The petitioner also relies upon the evidence of DW-3 Dilowar Hussain who in his deposition had stated that he is the Gaonburah of Sontoli since the year 1978 and that he knows Fatijan Nessa and her father's name is Lt. Ajgar Ali. But

DW-3 in his cross examination had stated that Fatikjan Nessa came to his residence for a Gaonburah certificate and she showed him the PAN card and Identity card and on the basis of the PAN card and the Identity card, the certificate was issued. In view of the said statement of DW-3, in cross examination, that the certificate issued by him was on the basis of the PAN card and the Identity card produced by the petitioner herself, it also has to be understood that the source of knowledge of the petitioner as regards the evidence rendered in-chief that the petitioner is the daughter of Ajgar Ali of village Sontoli, is the contents in the PAN card and Identity card and not of any personal knowledge of DW-3. In other words, it has to be understood that the evidence rendered by DW-3 that the petitioner is the daughter of Ajgar Ali of village Sontoli would be a hear-say evidence as regards the DW-3. But at the same time, we also have to take note of that the evidence of DW-2 also provides that the petitioner is the daughter of Ajgar Ali of village Sontoli and the said evidence could not be rebutted by the State in their cross examination.

7. The petitioner also places reliance on a certificate of marriage issued by the Muslim Marriages & Divorces Register & Kazi Mahtoli (Sontoli) which contains the information that Fatikjan Nessa is the daughter of Lt. Azgar Ali of village Sontali Satra, but it is noticed that the said certificate is dated 14.12.2020, whereas it is an admitted position that the marriage of the petitioner took place on 01.01.1978. Section 9 of the *Muslim Women (Protection of Rights on Marriage) Ordinance, 2018* provides that a Muslim marriage which had already been solemnized can be registered within a period of one month and from such point of view, the marriage certificate dated 14.12.2020 in respect of a marriage that took place on 01.01.1978 would not be acceptable in

law and further the information contained in the said certificate of 14.12.2020 would not be contemporaneous to the period when the actual marriage had taken place.

8. From such point of view, we do not notice any acceptability of the marriage certificate dated 14.12.2020. But, however, the evidence rendered by DW-2, Juran Ali the brother of the petitioner whose name again appears with Ajgar Ali, where the name of Agjar Ali also appears in the 1965 voters list would be a credible evidence that requires an examination.

9. In the circumstance, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the voters list of 1966, 1970, 1979 and 1985 of village Suntoli, which contains the name of Ajgar Ali in the voters list of 1966, 1970, 1985 and that of the voters list of 1979 of village Sontoli which contains the name of Ajgar Ali and Juran Ali together, where both of them are shown to be residing in the same house, as well as the evidence of DW-2. The respondents in the Home Department may also make their own verification on the aforesaid aspect and if so advised to also cross examine the DW-2 and thereafter submit a report before the Tribunal.

10. Accordingly, the petitioner shall appear before the Tribunal on 13.07.2023.

11. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated

11.08.2022 of the Foreigners Tribunal No.7 Barpeta in Case No.F.T.530/2017 corresponding to R/IM(D)T Case No.2822/97 and if it is against the petitioner, consequential action under the law shall follow.

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

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

14. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant