

GAHC010207592019



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

Case No. : WP(C)/6538/2019

AYMONA KHATUN
D/O- HASEN KHA, W/O- MAYEZ UDDIN, R/O- BALABHITA, P.S. BARPETA
ROAD, DIST- BARPETA, ASSAM

VERSUS

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

2:THE STATE OF ASSAM
THROUGH THE SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-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
GHY-5

5:THE DY. COMMISSIONER
BARPETA
P.O. AND DIST- BARPETA
ASSAM
PIN- 781301

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND DIST- BARPETA
ASSAM
PIN- 78130

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

24.07.2023

(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. AI Ali, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Aymona Khatun had been referred to the Foreigners Tribunal No. 8, 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. 190/2017, wherein an opinion dated 29.09.2018 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 1965 of village Sukhmanah, police station-Barpeta in the present Barpeta district, which contains the name of Hasen Kha son of Halim at serial No. 491. It is claimed that Hasen Kha is the father of the petitioner. Hasen Kha son of Halim aged

about 90 years rendered evidence before the Tribunal as DW-2, wherein it was stated that the writ petitioner is his daughter, who was born at his residence at village Sukhmanah.

4. If the evidence rendered by DW-2 is to be accepted, the petitioner may have discharged the burden under section 9 of the Foreigners Act, 1946 that she is not a foreigner.

5. In view of the above, we remand the matter back to the Tribunal for appreciation of the evidence of DW-2. The Tribunal may require the re-appearance of the DW-2 before the Tribunal for further cross examination by the State through the Home Department. The Tribunal shall also verify and satisfy itself whether the person appearing before the Tribunal as DW-2 is actually Hasen Kha son of Halim of the voters list of 1965 of village Sukhmanah. After 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 29.09.2018 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 17.08.2023. 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