

GAHC010215222019



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

Case No. : WP(C)/6634/2019

SERJAN NESSA
W/O- AHEJUDDIN, D/O- SERAJ ALI, VILL- GUTIPARA PT-V, P.S. BILASIPARA
DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR GHY-6

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

4:THE STATE COORDINATOR OF NRC, ASSAM
DISPUR GHY-6

5:THE DY. COMMISSIONER, DHUBRI
DIST- DHUBRI, ASSAM
PIN- 783301

6:THE SUPERINTENDENT OF POLICE, DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

7:THE OFFICER-IN-CHARGE
BILASIPARA P.S.
DIST- DHUBRI
ASSAM PIN- 78334

Advocate for the Petitioner : MR. M I HUSSAIN

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

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

02.05.2023

(AM Bujor Barua, J)

Heard Mr. M.I. Hussain, 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. A.I. 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 as well as Superintendent of Police (Border), Dhubri and Mr. N.K. Das, learned Government Advocate for the Deputy Commissioner, Dhubri.

2. The petitioner, Serjan Nessa had been referred to the Foreigners Tribunal No.6th, Dhubri at Bilasipara, Dhubri 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 resulting in registration of Case No. F.T.6th DBB/203/2018. The learned Tribunal rendered an opinion dated 11.06.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding, the petitioner relies on the voters list of 1966 of village Gutipara, Part III Bogribari in the Dhubri District which contains the name of Moyan Sheikh, Son of Kamulya at Serial No.118 and that of Sarijran

Bibi, wife of Moyan at Serial No.119 where both of them were shown to be residing at House No.36. The petitioner thereafter relies on the voters list of 1985 of village Gutipara Part III containing the name of Sajiron Bewa, wife of Moyan Ali and that of Siraj Ali, son of Moyan Ali at Serial Nos.197 and 198 respectively where both are shown residing in the same House No.4. It is stated that Sajiran Bibi, who after her husband's death ought to have referred as Sajiran Bewa, had been incorrectly shown as Sajiran Bibi wife of Moyan Ali. Sajiran Bibi after her husband's death, now known to be Sajiran Bewa is acceptable under the law governing the parties.

5. Petitioner also relies upon a Kabinnama, which is annexed at page 40 as Annexure 11 of the writ petition which contains the information that Musstt. Serjan Nessa is the daughter of Md. Siraj Uddin of village Gutipara, P.S. Bilasipara, District Dhubri and accordingly claims to have discharged the burden that Siraj Ali, son of Moyan Ali referred in the voters list of 1985 of village Gutipara, Part III is the father of the petitioner and also accordingly claims to have discharged the burden under Section 9 of the Foreigners Act, 1946.

6. A question would remain as to whether Md. Siraj Uddin of village Gutipara as referred in the Kabinama, a copy of which has been annexed at page 40, Annexure 11 to the writ petition and Siraj Ali referred in the voters list of 1985 of village Gutipara, Part III are one and the same person.

7. Under the circumstances, the matter is remanded to the Tribunal to examine the voters lists of 1966 of village Gutipara, Part-III, Bogribari in the Dhubri District as well as the voters list of 1985 of village Gutipara, Part III containing the name of Siraj Ali, son of Moyan Ali and also as to examine the kabinama which provides the information that Musstt. Serjan Nessa is the daughter of Md. Siraj Uddin of village Gutipara, P.S. Bilasipara, District Dhubri

and also by taking note of the evidence of the Qazi who had deposed as DW4, to arrive to a conclusion that Siraj Ali, son of Moyan Ali of village Gutipara Part III referred in the voters list of 1985 and Md. Siraj Uddin of village Gutipara Part III referred in the Kabinama are one and the same person and also to examine whether the information contained in the said voters list and kabinama could establish that the petitioner is a citizen of India.

8. Respondents in the Home Department may also make their own verification that Md. Siraj Uddin of village Gutipara referred in the kabinama and Siraj Ali, son of Moyan Ali of village Gutipara part III are one and same person.

9. Accordingly, upon doing the needful, a reasoned order be passed by the Tribunal.

10. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 11.06.2019 rendered in Case No.F.T.6th DBB/203/2018 and if it goes against the petitioner, consequence as per law shall follow.

11. The petitioner shall appear before the Foreigners Tribunal, 6thDhubri at Bilasipara, Dhubri on 07.06.2023.

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

13. The writ petition is disposed of as indicated above.

14. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant