

GAHC010232412022



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

Case No. : WP(C)/7325/2022

ULUPI BISWAS @ ULUPI MANDAL
D/O- BINAY MANDAL, W/O- LATE NRIPEN BISWAS, R/O- VILL.- BAMUN
GAON PART-I, P.S. ABHAYAPURI, DIST. BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW DELHI-110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED 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
BONGAIGAON NO. 2
ABHAYAPURI
P.O. AND P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSAM
PIN- 783383.

6:THE DEPUTY COMMISSIONER
BONGAIGAON
P.O. AND P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN- 783380.

7:THE SUPERINTENDENT OF POLICE (BORDER)

BONGAIGAON
P.O. AND P.S. BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN- 783380.

8:THE OFFICER-IN-CHARGE OF ABHAYAPURI POLICE STATION
P.O. ABHAYAPURI
DIST. ABHAYAPURI
ASSAM
PIN- 783383

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 04.05.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L

Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 5, 7 and 8 being the authorities under the Home Department of the Government of Assam, Mr. T Pegu, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. K Phukan, learned counsel for the respondent no. 6 being the Deputy Commissioner, Bongaigaon.

2. The petitioner Ulupi Biswas had been referred to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of Case No. BNGN/FT-2/APR/Case No. 591/2017. The Tribunal rendered an opinion dated 25.08.2022 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 Khatal para PS Sidli, which now would be Basugaon PS of the present Chirang district, which contains the name of Gosailal Mondal, S/O Sri Ram at Sl. No. 141. The petitioner also relies on the voters' list of 1970 of village Khatal para which contains the name of Gosailal Mondal, S/O Sri Ram and Binay Mandal, S/O Gosailal Mondal at Sl. No. 213 and 214 respectively and both are shown to be residing in the same house No. 88. The petitioner claims that Gosailal Mondal is her grandfather and Binay Mandal is her father.

4. Binay Mandal had rendered evidence before the Tribunal stating in the examination-in-chief as well as in response to questions put by the Tribunal that Ulupi Biswas is his daughter and that she was born in the year 1983 and also

describing his other family members.

5. According to the petitioner the burden under Section 9 of the Foreigners' Act, 1946 has been discharged.

6. We have noticed that Binay Mandal had not been cross examined by the Home Department of the Government of Assam. In the circumstance, we remand the matter back to the Tribunal to enable the Home Department to cross examine Binay Mandal on the veracity of the evidence he had rendered that Ulupi Biswas is his daughter. The petitioner is at liberty to produce any further material, if so available. Upon doing the needful, the Tribunal to pass a reasoned order.

7. The petitioner to appear before the Tribunal on 16.06.2023.

8. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 25.08.2022 passed in BNGN/FT-2/APR/Case No. 591/2017 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant