

GAHC010236332019



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

Case No. : WP(C)/7339/2019

NABIRON NESSA
D/O. LT. FAZAR ALI, W/O. LT. BANIZ MIA, VILL. JANIA, P.S. AND DIST.
BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, HOME DEPTT., NEW DELHI-
01.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOK ROAD
NEW DELHI.

4:THE DY. COMMISSIONER

BARPETA
DIST. BARPETA
ASSAM.

5:THE SUPDT. OF POLICE (B)

BARPETA

DIST. BARPETA
ASSAM.

6:THE STATE COORDINATOR

NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI-05

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

ORDER

Date : 02.03.2023

(A.M. Bujor Barua, J)

Heard Mr. S. Hoque, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1 and 6, being the Union of India and the State Co-ordinator of NRC respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 5, being the authorities in the Home Department; Mr. A. Ali, learned counsel for the respondent No. 3, being the Election Commission of India; Mr. K. Phukan, learned counsel for the respondent No. 4, being the Deputy Commissioner, Barpeta.

2. The petitioner Nabiron Nessa was referred to the Foreigners' Tribunal No. 1, Barpeta for an opinion as to whether she is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971 and accordingly F.T. Case No. 142/16 corresponding to IM(D)T Case No. 1865/C/98 was registered. The petitioner relies upon the voters' list of 1966 of village Daukmari, P.S. Barpeta in the Barpeta district wherein at Sl. No. 445 the name

of Kalimuddin son of Aku Mia and at Sl. No. 446 the name of Fazar Ali son of Kalimuddin appear and both belong to the same household. The petitioner claims that Fazar Ali son of Kalimuddin of the voters' list of 1966 is her father. The Gaonburah of village Daukmari namely Samsul Alam had rendered his evidence on 23.07.2018, who was 77 years old at that relevant time, by stating that he was the Gaonburah of Daukmari village from the year 1971, he personally knew the proceedee Nabiron Nessa and he further knew the father of the proceedee Fazar Ali since the year 1966.

3. The aforesaid evidence rendered by the Gaonburah Samsul Alam has not been controverted by the State authorities while cross-examining the said Gaonburah although otherwise he was cross-examined.

4. As the voters' list of 1966 of Daukmari village and the evidence of the Gaonburah of Daukmari village may lead to a conclusion that the petitioner may not be a person who entered the State of Assam from the specified territory subsequent to 25.03.1971, we remand the matter back to the Foreigners' Tribunal No. 1, Barpeta for appreciation of the aforesaid evidence and to pass a reasoned order thereon. If advised, the State authorities may bring the Gaonburah Samsul Alam back to the witness box for further cross-examination or the State authorities may also produce any material evidence which may indicate that the evidence of the Gaonburah may be false or incorrect. Upon considering such material, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 02.11.2018 in F.T. Case No. 142/16 corresponding to IM(D)T Case No. 1865/C/98 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 10.04.2023. Till the reasoned order is passed, no coercive action be taken

against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant