

GAHC010237992018



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

Case No. : WP(C)/7498/2018

KULSUM

D/O- KUDDUS ALI @ A KUDDUS, W/O- HABEZ UDDIN, VILL- TITAPANI, P.S-
KALGACHIA, DIST- BARPETA, ASSAM, PIN- 781319

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE MIN OF HOME AFFAIRS, NEW DELHI- 01

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 01

3:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
HOME AND POLITICAL DEPTT
DISPUR
GHY- 6

4:THE DEPUTY COMMISSIONER
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

5:THE SUPERINTENDENT OF POLICE(B)
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

6:THE ELECTORAL REGISTRATION OFFICER

41 JANIA LEGISLATIVE ASSEMBLY CONSTITUENCY
DIST- BARPETA
ASSAM
PIN- 781319

7:THE ELECTION OFFICER
BARPETA
ASSAM
PIN- 781301

8:THE STATE COORDINATOR
NRC
BHANGAGARH
GHY- 0

Advocate for the Petitioner : MD H R AHMED

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

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

ORDER

17.05.2023

(AM Bujor Barua, J)

Heard Mr. HR Ahmed, 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. J Payeng, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, as well as the Superintendent of Police (B) Barpeta and Mr. PK Medhi, learned Government Advocate for the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Kulsum was referred to the Foreigners Tribunal 5th Barpeta Assam 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.FT(5th)47/16 corresponding to Reference IM(D)T Case No.4945(A) dated 31/7 wherein an opinion dated 10.09.2018 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, petitioner relies upon the voters list of 1966 of village Titapani P.S. Baghbar in the present Barpeta district which contains the name of Hossen Ali, son of Shaheb at Sl.No.233 and that of Kairan Nessa wife of Hossen at Sl.No.234 and both of them are shown to be residing in the same House No.90. Reference is also made to the voters list of 1989 of village Titapani which contains the name of A Kaddus son of Hossen Ali at Sl.No.565 and that of Mayful Nessa, wife of A Kaddus at Sl.No.566. It is claimed that A Kaddus, son of Hossen Ali of the 1989 voters list of village Titapani is the father of the petitioner.

5. To establish that A Kaddus, son of Hossen Ali of the 1989 voters list is the father of the petitioner, A Kaddus @ Kuddus Ali, son of Hossen Ali@ Hassen Ali @ Hassen had deposed before the Tribunal as DW-2, wherein he takes a specific stand that the writ petitioner/proceedee Kulsum is his daughter. But it is noticed that the DW-2, A Kaddus @ Kuddus Ali has not been cross examined by the

Home Department, Government of Assam.

6. Accordingly, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the DW-2 A Kaddus @ Kuddus Ali, as regards the veracity of the deposition (evidence-in-chief) on affidavit rendered by him.

7. The respondents in the Home Department may also make their own verification on the aforesaid aspect and submit a report before the Tribunal, if so advised.

8. Accordingly, the petitioner shall appear before the Tribunal on 01.07.2023. The petitioner may also produce all relevant material/document to establish her case, if so advised.

9. 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 10.09.2018 of the Foreigners Tribunal 5th Barpeta Assam in Case No.FT(5th)47/16 corresponding to Reference IM(D)T Case No.4945(A) dated 31/7 and if it is against the petitioner, consequential action under the law shall follow.

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

11. Writ petition stands disposed of in the above terms.
12. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant