

GAHC010240992022



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

Case No. : WP(C)/7702/2022

LAL BHANU BIBI
DAUGHTER OF LATE TALAB ALI,
RESIDENT OF VILLAGE- POYESTICHER (CHALAKURA),
P.O.- HAMIDABAD, P.S.- FAKIRGANJ,
IN THE DISTRICT OF DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD

NEW DELHI- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE STATE COORDINATOR OF NRC
ASSAM
BHANGAGARH
IN THE DISTRICT OF KAMRUP(METRO)
ASSAM

GUWAHATI- 781005.

5:THE DEPUTY COMMISSIONER
DHUBRI
DISTRICT- DHUBRI
ASSAM.

6:THE SUPERINTENDENT OF POLICE (BORDER)
DHUBRI
DISTRICT- DHUBRI
ASSAM.

7:THE FOREIGNERS TRIBUNAL-2
DHUBRI
DISTRICT- DHUBRI
ASSAM

Advocate for the Petitioner : MR B KHAKHLARY

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

BEFORE

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

O R D E R

12.05.2023

(A.M. Bujor Barua, J)

Heard Mr. B Phukan, 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. J Payeng, 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. U Das, learned counsel for the Deputy Commissioner, Dhubri.

2. The Foreigners Tribunal No. 2, Dhubri had issued notice to Lalvanu wife of

Akbar of village Salakura Part-II under Fakirganj police out post to discharge the burden under section 9 of the Foreigners Act, 1946 whether the person is a citizen of India. But the notice of the Tribunal was served upon Lal Bhanu Bibi, daughter of Talab Ali and wife of Asgor of village Salakura Part-II.

3. Lal Bhanu Bibi wife of Asgor and daughter of Talab Ali appeared before the Tribunal, claims to have discharged the burden by producing various materials that she is a citizen of India. But at the later stage in the proceeding, the Tribunal discarded the evidence rendered by Lal Bhanu Bibi wife of Asgor and daughter of Talab Ali inasmuch as, the materials produced did not prove that Lal Bhanu wife of Akbar is a citizen of India.

4. We are unable to reconcile the two situations. If the notice was intended to Lalvanu wife of Akbar, it ought to have been served to Lalvanu wife of Akbar of village Salakura Part-II, so that whosoever is the person can prove her citizenship. Once the notice is served on Lal Bhanu Bibi wife of Asgor, daughter of Talab Ali of village Salakura Part-II, the said person can only prove that Lal Bhanu Bibi wife of Asgor daughter of Talab Ali is a citizen of India and cannot be expected to prove that Lalvanu wife of Akbar of village Salakura Part-II is a citizen of India.

5. Because of the aforesaid inconsistency, the opinion dated 14.07.2022 rendered by the Foreigners Tribunal No. 2, Dhubri in F.T. Case No. 901/F/2015 (reference IMDT Case No. 502/1998) is set aside.

6. But, however, if the respondents in the Home Department of the Government of Assam is of the view that Lal Bhanu Bibi wife of Asgor and daughter of Talab Ali of village Salakura Part-II is required to be proceeded in the Tribunal, appropriate reference may be made against Lal Bhanu Bibi wife of

Asgor and daughter of Talab Ali of village Salakura Part-II and the matter may be adjudicated as per law. On the other hand, if the Tribunal is of the view that Lalvanu wife of Akbar of village Salakura Part-II is also required to be proceeded, appropriate notice be served on the said person and not on some other person.

7. The writ petition is allowed as indicated above.
8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant