

GAHC010241932019



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

Case No. : WP(C)/8059/2019

JUGALDASI MANDAL
W/O- LT HARAN MANDAL, D/O- LT SURENDRA MANDAL, R/O- VILL-
KHAIRABARI, MOUZA- GOBARDHANA, P.S. BARPETA ROAD, DIST-
BARPETA, ASSAM, PIN-

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, 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 DY. COMMISSIONER
BARPETA

P.O. AND DIST- BARPETA
ASSAM
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA

P.O. AND DIST- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI
TO BE REP. BY CHIEF ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION
ASSAM
BHANGAGARH
LACHIT NAGAR
GHY-

Advocate for the Petitioner : DR. B AHMED

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

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

Date : 08-02-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. N Haque, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of the respondents in the Union of India as well as for the authorities under the NRC, Ms. U Das, learned Government Advocate for the Deputy Commissioner, Barpeta, Mr. AI Ali learned counsel for the Election Commission of India, Ms. A Verma, learned Special Counsel Foreigners Tribunal for the authorities under the Home Department, Government of Assam as well as the Superintendent of Police (B) Barpeta.

2. The petitioner, namely, Jugaldasi Mandal has been referred to the Foreigners Tribunal No.2 Barpeta for an adjudication as to whether she is a

person who had entered the State of Assam subsequent to 25.03.1971 from the specified territory and in the resultant process Police Reference IM(D)T Case No.5064/B/98 renumbered as F.T. (2nd) Case No.967/16 was registered.

3. The Foreigners Tribunal No.2 Barpeta by its order dated 20.02.2019 had opined that the petitioner could not establish that she is a *bona fide* citizen of India and that she had not entered India after the cutoff date i.e. 25.03.1971.

4. Before the Tribunal the petitioner produced a Migration Certificate dated 02.06.1964, showing the name of Surendra Mandal, whom the petitioner claims to be her father. But no such material is available that the petitioner is in fact the daughter of Surendra Mandal of the Migration Certificate. Further the petitioner states by referring to a certificate issued by the Panchayat authorities that she got married in the year 1971.

5. Ms. A Verma, learned counsel for the Home Department, Government of Assam has raised an issue that if the petitioner had got married in the year 1971 as to why her name was also not included in the Migration Certificate dated 02.06.1964. But, at the same time, as the petitioner has produced a certificate by the Panchayat authorities which certified that the petitioner was married in the year 1971, we remand the matter back to the Foreigners Tribunal No.2, Barpeta to give the petitioner an opportunity to adduce further evidence including that of the authorities issuing the Panchayat certificate to establish that she was married in the year 1971 which may lead to a *prima facie* indication that she existed in the State of Assam around that time i.e. prior to

25.03.1971. The petitioner may also be allowed to examine any further person who may be a witness to her marriage in the year 1971.

6. Although, we are clarifying that we are not interfering with the order dated 20.02.2019 of the Foreigners Tribunal No.2 Barpeta, however, in the interest of justice, we provide an opportunity to the petitioner to adduce further evidence to prove her existence as on 25.03.1971. In the event, the Tribunal is of the view that the petitioner could establish her appearance before the cutoff date i.e.25.03.1971, a reasoned order be passed and such order shall prevail over the order dated 20.02.2019. If the Tribunal is of the opinion that the petitioner could not establish her existence prior to the cutoff date i.e. 25.03.1971 any appropriate order may be passed.

7. Accordingly, the petitioner is directed to appear before the Foreigners Tribunal No.2 Barpeta on 13.03.2023.

8. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant