

GAHC010258552017



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

Case No. : WP(C)/504/2017

AYSHA KHATUN @ AYSHA BEWA
W/O. LT. JOHOR ALI, D/O. SUKUR ALI MONDAL, VILL. MAYER CHAR PT-
VII, P.O. NAYER ALGA, P.S. BILASIPARA, DIST. DHUBRI, ASSAM, PIN.-
783348.

VERSUS

THE UNION OF INDIA and 7 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-
01.

2:THE STATE OF ASSAM
REP. BY CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GHY.-06.

3:THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

HOME DEPTT.
DISPUR
GHY.-06.

4:THE DIRECTOR GENERAL OF POLICE
ASSAM

ULUBARI
GUWAHATI-05.

5:THE SUPERINTENDENT OF POLICE
B DHUBRI

ASSAM

PIN. 783301.

6:THE DEPUTY COMMISSIONER

DHUBRI
ASSAM
PIN. 783301.

7:THE OFFICER-IN-CHARGE
BILASIPARA POLICE STATION

DIST. DHUBRI
ASSAM
PIN. 783348.

8:THE ELECTOR REGISTRATION OFFICER

NO. 26 BILASIPARA WEST LAC
DIST.- DHUBRI
ASSAM
PIN. 783348

Advocate for the Petitioner : MDI H KHAN

Advocate for the Respondent : GA, ASSAMR. 2-8.

BEFORE

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

O R D E R

19.07.2023

(A.M. Bujor Barua, J)

Heard Mr. MU Mondal, learned counsel for the petitioner. Also heard Mr. B Sarma, learned CGC appearing on behalf of respondents in the Union of India, Ms. L Devi learned counsel for the authorities in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Mr.

PK Medhi, learned counsel for the Deputy Commissioner, Dhubri.

2. The petitioner Aysha Khatun @ Aysha Bewa had been referred to the Foreigners Tribunal No. 7, Dhubri at Bilasipara for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of Case No. 101/CPR/16 (FT Case No. 336/CPR/11), wherein an opinion dated 11.01.2017 was rendered declaring the petitioner to be a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Boyejeralga Part-V in the present Dhubri district, which contains the name of Sukur Ali Sk son of Haben Mondal at serial No. 19. Reliance is also placed on the voters list of 1970, which contains the name of Sukur Ali Sk son of Haben at serial No. 20. The subsequent voters list of 1989 and 1997 contains the name of Sukur Ali Mondal son of Haben Mondal. But the voters list of 1985, which contains the name of Sukur Ali Sk son of Habej Ali Mondal at serial No. 89 of village Gutipara Part-V and not Boyzeralga Part-V. However, Sukur Ali Mondal had deposed before the Tribunal as DW-5 stating that the writ petitioner Aysha Bewa is his daughter, who was married to Jahar Ali of village Mayer Char Part-VII. A voters list of 1997 of Mayer Char Part-VII is also available on record which contains the name of Aysha Khatun wife of Mohor Ali. It is sought to be explained that after the death of her first husband Jahar Ali, the petitioner Aysha Khatun married to Mohar Ali.

4. In view of the evidence rendered by Sukur Ali son of Habej Ali Mondal of village Boyzeralga Part-V as DW-5, we remand the matter back to the Tribunal to examine the voters list of 1966, 1970, 1989 and 1997 of village Boyzeralga Part-V as well as the evidence rendered by DW-5 and pass a reasoned order. The respondents in the Home Department may cross-examine the DW-5 as may

be advised and also make necessary verification and submit a report before the Tribunal. The Tribunal shall also go into the question as to why the voters list of 1985 is of village Gutipara Part-V instead of Boyzeralga Part-V, which also contains the name of Sukur Ali Sk son of Habej Ali Mondal. The Tribunal shall also go into the question that Aysha Khatun upon the death of her earlier husband Jahar Ali had married to another person Mohor Ali. After doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 11.01.2017 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioners shall appear before the concerned Foreigners Tribunal on 14.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.

8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant