

GAHC010261332019



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

Case No. : WP(C)/7922/2019

ANOWARA KHATUN

D/O- MOYEN UDDIN @ MD. MOYEN UDDIN @ MOYEN ALI @ MOINUDDIN
@ MAIN UDDIN, W/O- GANJER ALI, VILL- PAKHIURA, P.O. MORNOI, P.S.
MORNOI, DIST.- GOALPARA, PIN- 783101.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF HOME, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF HOME
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
GOALPARA
PIN- 783101.

4:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
PIN- 783101.

5:THE ELECTION COMMISSION
GOVT. OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION (NRC)
ASSAM
GUWAHATI-32.

7:FOREIGNERS TRIBUNAL
NO. 4
GOALPARA
REPRESENTED BY THE STANDING COUNSEL
FOREIGNERS TRIBUNAL
PIN- 783101

Advocate for the Petitioner : MR. A ROSHID

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 16-08-2023
(AM Bujor Barua, J)

Heard Ms. T Begum, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 4 and 7 being the authorities under the Home Department of Government of Assam, Mr. P Sarma, learned Additional Senior Government Advocate for the respondent no. 3 being the Deputy Commissioner, Goalpara and Mr. AI Ali, learned counsel for the respondents no. 5 being the authorities under the Election Commission of India.

2. The petitioner Anowara Khatun had been referred to the Foreigners' Tribunal No. 4, Goalpara for rendering an opinion as to whether she is a foreigner under the Foreigners' Act, 1946 resulting in registration of F.T. Case No. FT (G-4)/175/2018. The Tribunal rendered an opinion dated 18.09.2019 declaring the petitioner to be a foreigner.

3. In the writ proceeding reliance is placed on the voters' list of 1966 of village Uzirar Char Police Station Baghbor in the present Barpeta district which contains the names of Taraf Ali S/O Kasimuddin at Sl. No. 34 and that of Joygor Nessa W/O Taraf Ali at Sl. No. 35 where Taraf Ali is aged about 60 years and it is claimed that Taraf Ali is the grandfather and Joygor Nessa is the grandmother of the petitioner. The additional voters' list of 1971 of village Uzirar Char as corrected contains the name of Mainuddin S/O Taraf Ali at Sl. No. 1241 and his age is shown as 22 years. The corrected additional voters' list of 1974 of village Uzirar Char also contains the name of Mainuddin S/O Taraf and his age is shown to be 25 years. The voters' list of 1985 of village Uzirar Char contains the name of Taraf Ali S/O Kasimuddin at Sl. No. 6 and his age is shown as 70 years, Aymona Khatun W/O Tarap at Sl. No. 7 and her age is shown as 62 years along with the other sons of Tarap but Sl. No. 10 contains the name Moyan Ali S/O Noran showing his age to be 37 years.

4. An objection is raised that Moyan Ali of the voters' lists of 1971 and 1974 of village Uzirar Char is the son of Taraf but in the voters' list of 1985 of village Uzirar Char he is depicted as Moyan Ali S/O Noran. But it is noticed that Moyan Ali S/O Noran is also residing in the same house no. 3 as Taraf Ali along with his other sons and the age of Moyan Ali S/O Noran is shown as 37 years whereas it was 27 years in the year 1974. The voters' list is accepted to be incorrect to the extent that it ought to be Moyan Ali S/O Taraf rather than Moyan Ali S/O Noran.

5. The petitioner relies upon a school certificate issued by the Headmaster of Moukhowa Uzirar Char M.E. Madrassa which contains the information that Anowara Khatun is the daughter of Md. Mayen Uddin of village Uzirar Char. Reliance is also placed on a Kabin Nama which contains the information that Anowara Khatun is the daughter of Mayen Uddin of village Uzirar Char. Relying

on the school certificate and Kabin Nama, the petitioner has submitted that she has established that she is the daughter of Mayen Uddin of the voters' list of 1971, 1974 and 1985 of village Uzirar Char and the grandfather is Taraf Ali of the voters' list of 1966 of village Uzirar Char. But, however, it is noticed that the requirement of the procedure to be followed as laid down in *Anima Das v. Union of India in WP(C)/3056/2018* as regards the evidentiary value of the school certificate had not been followed.

6. In the circumstance the matter stands remanded back to the Tribunal and the Tribunal shall call for the records in original of the admission register of Moukhowa Uzirar Char M.E. Madrassa and verify from the same whether it contains the information that Anowara Khatun is the daughter of Mayen Uddin. The Tribunal shall also examine the authenticity of the school admission register that may be produced apart from looking at the contents thereof and satisfy itself that is an original document. The marriage register in original which resulted in Kabin Nama at page-57 be also called for and contents thereof be also verified. The respondents in the Home Department may make their own enquire and submit a report before the Tribunal. Upon doing the needful the Tribunal to pass a reasoned order.

7. The petitioner to appear before the Tribunal on 18.09.2023.

8. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 18.09.2019 passed in Case F.T. Case No. FT (G-4)/175/2018 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant