

GAHC010267992022



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

Case No. : WP(C)/99/2023

AMIRAN NESSA
W/O- JARAH UDDIN,
R/O- VILLAGE- KHUTAMARI,
P.S. AND DISTRICT- GOALPARA,
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
GOVT. OF INDIA,
SHASTRI BHAWAN,
TILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI- 06.

3:THE DEPUTY COMMISSIONER OF GOALPARA
P.O. AND DIST.- GOALPARA
ASSAM
PIN- 783101.

4:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
P.O. AND DIST.- GOALPARA

ASSAM

PIN- 783101.

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR OF NRC
ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

31.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.5 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Amiran Nessa had been referred to the Foreigners' Tribunal No.1, Goalpara, for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of F.T. Case No.7229/G/2016. The Tribunal rendered an opinion dated

28.10.2022 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1966 of village Nayapara Part-I, P.S.-Goalpara, in the Goalpara district, which contains the names of Innaton Nessa W/o Usman Ali and that of Usman Mondal S/o Janab Ali. It is stated that Usman Mondal is the father of the petitioner whereas Innatan Nessa is the mother. In the voters list of 1979 of village Nayapara Part-I, the name of Usman M. at Sl.No.538 appears along with Innas Ali S/o Usman at Sl.No.542 and both are shown to be residing in the same house No.78(Ka). Innas Ali S/o Usman had deposed before the Tribunal as DW-2 wherein in paragraph 2 of the affidavit-in-evidence it is stated that the petitioner Amiran Nessa is his own younger sister. In cross-examination he stated that he has 6 sisters and Amiran is the 3rd child of their parents. He also stated that he was about 12 years of age when Amiran was born. It is noticed that in the opinion rendered by the Tribunal the aforesaid evidence of DW-2 Innas Ali S/o Usman Ali had not been given its consideration. If the evidence rendered by DW-2 Innas Ali S/o Usman is acceptable in law, the burden under Section 9 of the Foreigners Act, 1946 may have been discharged by the petitioner that she is the daughter of Usman Mondal of the 1966 voters list of village Nayapara Part-I.

4. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966 of village Nayapara Part-I as well as the voters list of 1979 of the same village containing the names of Usman M. and Innas Ali in the same voters list, where both are residing in the same house and also the evidence rendered by Innas Ali as DW-2 and thereafter shall pass a reasoned order. The respondents in the Home Department may make their own verification and submit a report before the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 28.10.2022 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 05.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.
6. Send back the LCR immediately.
7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant