

GAHC010268062017



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

Case No. : WP(C)/995/2017

MUSTT. PIYARUN NESSA
D/O LT. IDRIS ALI, W/O LT. SURUJ ALI, R/O CHARLOCK, P.O.
JUNGLBLOCK, P.S. JAMUNAMUKH, DIST- NAGAON, ASSAM, NOW HOJAI
DISTRICT.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
HOJAI
P.O. and DIST- HOJAI
ASSAM

4:THE SUPERINTENDENT OF POLICE B
HOJAI
DIST- HOJAI
ASSAM

5:THE OFFICER IN CHARGE
JOMUNAMUKH P.S.
DIST- HOJAI
ASSA

Advocate for the Petitioner : MR H I CHOUDHURY
Advocate for the Respondent : GA, ASSAM

BEFORE

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

O R D E R

21.06.2023

(A.M. Bujor Barua, J)

Heard Mr. AS Tapadar, 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. G Sarma, 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. K Phukan, learned counsel for the Deputy Commissioner, Nagaon.

2. The petitioner Musstt. Piyarun Nessa had been referred to the Foreigners Tribunal No. 10, Nagaon at Doboka 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 FT(D) Case No. 170/2015, wherein an opinion dated 18.05.2016 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 Charlock, police station- Jamunamukh in the Nagaon district, which contains the name of Idris Ali son of Ashkar at serial No. 103 and Moimun Nessa wife of Idris at serial No. 104 where both of them are shown to be residing in the same house No. 27. The voters list of 1970 of village Charlock also contains the similar information. The petitioner also relies upon the voters list of 1985 of village Charlock, which contains the name of Moimun Nessa wife of Idris at serial No. 316 and that of Fiarun Nessa daughter of Idris at serial No. 318 and

both of them are shown to be residing in the same house No. 118. As the name of Piyaun Nessa appears along with Moimun Nessa, who is shown to be the wife of Idris and the name of Moimun Nessa and Idris appears together in the voters list of 1966 and 1970 of the same village Charlock, it is claimed the burden under section 9 of the Foreigners Act, 1946 has been discharged by the petitioner.

4. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1966, 1970 and 1985 of village Charlock. The petitioner shall produce the complete voters list of 1966, 1970 and 1985 of village Charlock before the Tribunal for its examination. The State through the Home Department may also examine as to whether Fiarun Nessa of the 1985 voters list and the writ petitioner Piyaun Nessa are one and the same person and thereafter submit a report before the Tribunal. Upon 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 18.05.2016 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioners shall appear before the concerned Foreigners Tribunal on 25.07.2023. 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