

GAHC010270952018



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

Case No. : WP(C)/8473/2018

FIROJA KHATUN
D/O- NURUL HOQUE MIYA, W/O- ABDUL MAZID, R/O- VILL-
CHATAMARI/GARABHADKHAWA, P.S. BAGUAN, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, 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 SUPERINTENDENT OF POLICE (B)
GOALPARA
P.O. AND DIST- GOALPARA
ASSAM PIN- 781301

4:THE DY. COMMISSIONER
GOALPARA
P.O. AND DIST- GOALPARA
ASSAM PIN- 781301

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE NRC COORDINATOR
NATIONAL REGISTER OF CITIZEN (NRC)
ASSAM
BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE NELSON SAILO

O R D E R

06.06.2023

(A.M. Bujor Barua, J)

Heard Mr. AR Sikdar, 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, Ms. A Verma, 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, Goalpara.

2. The petitioner Firoja Khatun had been referred to the Foreigners Tribunal No. 4, 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 resulting in registration of F.T. Case No. FT(G-4)628/2016, wherein an opinion dated 29.10.2018 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1966 of village Kamalpur, which contains the name of Nurul Hoque Miya son of Samir at serial No. 156 and that of Shabjan Nessa wife of Samir at serial No. 157, where Nurul Hoque Miya is shown to be aged about 28 years. It is claimed that Nurul Hoque Miya is the father and Shabjan Nessa is the grandmother of the petitioner. The petitioner also relies upon the voters list of 1975 of village Kamalpur, which contains the name of Nurul Hoque Miya son of Samir at serial

No. 189, Sabjan Nessa wife of Samir at serial No. 190 and Rejiya Khatun wife of Nurul Hoque at serial No. 191, where all of them are shown to be residing in the same House No. 69 and where the age of Nurul Hoque Miya is shown to be 38 years and that of Rejiya Khatun to be 32 years. The petitioner also relies upon the voters list of 1993 of village Kamalpur, which contains the name of Nurul Hoque Miya son of Samir at serial No. 272 showing his age to be 47 years although the name of Rejiya Khatun, wife of Nurul Hoque is missing. But in the voters list of 2010 of village Kamalpur, the name of Nurul Hoque son of Samir and that of Rejiya Begum wife of Nurul Hoque appear at serial Nos. 722 and 723 respectively, where Nurul Hoque is shown to be 72 years and Rejiya Begum is shown to be 52 years.

4. Nurul Hoque had deposed before the Tribunal as DW-2 whereas Rejiya Begum has deposed as DW-3, where both of them deposed that the petitioner Firoja Khatun is their daughter.

5. We have noticed that the respondents in the Home Department had declined to cross examine DW-2 and DW-3.

6. Ms. A Verma, learned counsel for the respondents in the Home Department has pointed out to the deposition of the Lat Mandal inasmuch as, the petitioner also relied upon a copy of a Jamabandi in respect of a plot of land at village Kamalpur to show that Nurul Hoque had inherited the land from his father Samir. The Lat Mandal deposed that the original of the Jamabandi is not available to examine the veracity of the information contained therein. Further, the Gaonbura who had issued a certificate in favour of the petitioner deposed before the Tribunal, which renders the information contained in the certificate to be not trustworthy.

7. As the DW-2 and DW-3 had deposed before the Tribunal that the petitioner Firoja Khatun is their daughter, where the name of DW-2 appears in the voters list of 1966 1975, 1993 and 2010 respectively and that of DW-3 in the voters list of 1975 and 2010 respectively, and as the said two witnesses had not been cross examined, we remand the matter back to the Tribunal to enable the Home Department to cross-examine the DW-2 and DW-3 as regards the veracity of their evidence rendered specifically taking note of the evidence of the Gaonbura and Lat Mandal and put it across the said evidence as regards the conflicting information that may be available in the evidence of the Gaonbura and the Lat Mandal. The respondents in the Home Department may also make their own verification as to whether Firoja Khatun is the daughter of Nurul Hoque Miya and Rejiya Khatun of the aforesaid voters list and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

8. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 29.10.2018 and if it goes against the petitioner, consequence as per law shall follow.

9. The petitioner shall appear before the concerned Foreigners Tribunal on 12.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

10. The writ petition is allowed as indicated above.

11. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant