

GAHC010272772019



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

Case No. : WP(C)/8376/2019

KHUSHBAN BIBI

D/O- LT. MANU HAR ALI, W/O- LT. ABDUL HANNAN, VILL. MIKIRATI
HOWGAON, P.S. DOBOKA, DIST- HOJAI, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.

REP. BY ITS SECY. TO THE MINISTRY OF HOME AFFAIRS, UNION OF INDIA,
NEW DELHI.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.

DISPUR

GHY.- 06.

3:THE ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA

NIRVACHAN SADAN

ASHOKA ROAD

NEW DELHI.

4:THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS

ASSAM

1ST FLOOR

ACHYUT PLAZA

G.S. ROAD

BHANGAGARH

GHY.

ASSAM

PIN- 781005.

5:THE DY. COMMISSIONER OF HOJAI DISTRICT
AT SANKARDEV NAGAR
P.O.
P.S. AND DIST.- HOJAI
ASSAM
PIN- 782442

6:THE SUPDT. OF POLICE (B)
OF HOJAI DISTRICT
AT SANKARDEV NAGAR
P.O.
P.S. AND DIST.- HOJAI
ASSAM
PIN- 78244

Advocate for the Petitioner : MR. A T SARKAR

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 26.05.2023

(A.M. Bujor Barua, J)

Heard Mr. A.T. Sarkar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India and Ms. K. Phukan, learned counsel for the respondent No. 5, being the Deputy Commissioner, Hojai.

2. The petitioner Khushban Bibi was referred to the Foreigners' Tribunal No. 10, Nagaon for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971

and accordingly F.T.(D) Case No. 1079/2015 was registered. The Tribunal had earlier rendered its opinion dated 07.09.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved WP(C) No. 1237/2019 was instituted which was given a final consideration by the order dated 01.03.2019.

3. By the order dated 01.03.2019, the petitioner was given an opportunity to rely upon the Ext. 15 Jamabandi of a plot of land at village Pub-Rowar Par wherein it contained the information that the name of the petitioner and her other brothers and sisters were mutated in place of Manohar Ali son of Sobed Ali. The petitioner claims that through the mutation order she could establish that Manohar Ali is her father and also that Manohar Ali himself is an Indian citizen.

4. In the circumstance, the matter was remanded back to the Tribunal to give a final consideration and appreciate the contents of the Jamabandi as to whether it leads to any conclusion that the petitioner is the daughter Manohar Ali. In response thereof the Tribunal had rendered another opinion dated 03.10.2019 wherein the Jamabandi which was relied upon was rejected by saying that it is a computer generated document and the requirement under Section 65(B) of the Indian Evidence Act, 1872 was not complied with and therefore the same cannot be taken note of.

5. We are in disagreement with the opinion rendered by the Tribunal that the Jamabandi cannot be given its consideration as it is a computer generated copy without compliance of Section 65(B) of the Indian Evidence Act, 1872. A perusal of the copy of the Jamabandi available on record makes it discernible that it is more of a certified copy rather than a computer generated copy which contains the seal and signature of the authority issuing the copy namely the Circle Officer

as well as some stamp duties had also been paid for the purpose.

6. In the circumstance, the matter is again remanded back to the Tribunal to given a due consideration to the Jamabandi referred above, as per law and pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 01.03.2019 in F.T.(D) Case No. 1079/2015 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 17.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant