

GAHC010279572019



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

Case No. : WP(C)/9204/2019

ABEDA KHATUN
D/O LATE AYNAL HOQUE @ AYNAL SHEIKH, W/O AWAL SHEIKH, VILL-
FULER CHAR PART-II, P.S.-SOUTH SALMARA, P.O.-KAKRADANGA, DIST-
SOUTH SALMARA, ASSAM, PIN-783128

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY, GOVERNMENT OF INDIA,
DEPARTMENT OF HOME AFFAIRS, NEW DELHI-1, INDIA

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GHY-6

3:THE SUPERINTENDENT OF POLICE (B)
SOUTH SALMARA
P.O. AND DIST-SOUTH SALMARA
ASSAM
PIN-783128

4:THE DEPUTY COMMISSIONER
SOUTH SALMARA
P.O. AND DIST-SOUTH SALMARA
ASSAM
PIN-783128

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE NRC CO-ORDINATOR
NATIONAL REGISTER OF CITIZEN (NRC)
ASSAM
BHANGAGARH
GUWAHATI-0

Advocate for the Petitioner : MR G S SARKAR

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

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

O R D E R

26.06.2023

(A.M. Bujor Barua, J)

Heard Mr. M Hoque, 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. T Pegu, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Dhubri.

2. The petitioner Abeda Khatun had been referred to the Foreigners Tribunal No. 2, Dhubri 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 Case No.290/F/2015, wherein an opinion dated 03.09.2019 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 No. 319 Fulerchar Part-II, police station Mankachar in the present South

Salmara district, which contains the name of Ahitullah Sk son of Alimullah at serial No. 526 and Jomela Bibi wife of Ahitullah at serial No. 527, where both of them are shown to be residing in the same house No. 126 (Ka). It is claimed that Ahitullah Sk is the grandfather and Jomela Bibi is the grandmother of the petitioner. Similar information is also available in the voters list of 1970 of village No. 319 Fulrechar Part-II. Reliance is placed on the voters list of 1985 of village No. 319 Fulerchar Part-II, which contains the name of Ahitullah Sheikh, son of Alimullah Sk at serial No. 735, Jomela Bibi wife of Ahitullah Sk at serial No. 736 and Aynal Hoque son of Ahitullah Sheikh at serial No. 737, where all three are shown to be residing in the same house No. 56. It is claimed that Aynal Hoque is the father of the petitioner. The voters list of 1997 of village No. 319 Fulerchar Part-II contains the name of Aynal Hoque son of Tohitullah at serial No. 221 and Mahmuda Bibi wife of Aynal at serial No. 222 and both of them are shown to be residing in the same house No. 82. It is clarified that the name of the father of the petitioner Aynal Hoque had been incorrectly stated in the voters list of 1997 to be Tohitullah, whereas he is otherwise Ahitullah Sheikh. Mahmuda Bibi is claimed to be the mother of the petitioner as well as wife of Aynal.

4. Mahmuda Bibi had rendered evidence before the Tribunal as DW-2 stating that the petitioner Abeda Khatun is her daughter.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of village No. 319 Fulerchar Part-II of the years 1966, 1970, 1985 and 1997 as well as the evidence rendered by the DW-2 Mahmuda Bibi. The Tribunal shall also examine as to whether Tohitullah, the father of Aynal Hoque of the 1997 voters list and Ahitullah Sheikh, the father of Aynal Hoque of the 1985 voters list of village Fulerchar Part-II are one and the same person. The Home Department of Government of Assam may make their

verification and submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 03.09.2019 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 01.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant