

GAHC010283652018



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

Case No. : WP(C)/99/2019

SHAHIDA KHATUN
D/O- SHAH JAMAL, W/O- ABUL MOZID, VILL- HATISHILA MUSLIMPARA,
P.S- LAKHIPUR, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY OF THE MIN OF HOME AFFAIRS, UNION OF
INDIA, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 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
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005

5:THE DEPUTY COMMISSIONER
GOALPARA
P.O
P.S AND DIST- GOALPARA
ASSAM

6:THE SUPERINTENDENT OF POLICE(B)
GOALPARA
P.O
P.S AND DIST- GOALPARA
ASSA

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 : 30.05.2023
(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. G. Sarma, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; Mr. T. Pegu, 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, Goalpara.

2. The petitioner Shahida Khatun was referred to the Foreigners' Tribunal No. 4, Goalpara 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. Case No. FT(G-4) 404/16 was registered. The Tribunal had

rendered its opinion dated 27.09.2018 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 this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Hatishila Musalmanpara, P.S. Lakhipur in the Goalpara district which contains the name of Hasen Ali son of Kurpan at Sl. No. 80 and that of Korful Nessa wife of Hasen at Sl. No. 81 and both are shown to be residing in the same house No. 24. The petitioner also relies upon the voters' list of 1970 of village Hatishila Musalmanpara, P.S. Lakhipur in the Goalpara district which contains the name of Hasen Ali son of Kurpan Ali at Sl. No. 91 and that of Korful Nessa wife of Hasen Ali at Sl. No. 92 and both are shown to be residing in the house No. 24. The petitioner further relies upon the voters' list of 1985 of village Hatishila Musalmanpara, P.S. Lakhipur in the Goalpara district which contains the name of Saha Jamal son of Hasen at Sl. No. 470. To establish that the petitioner Shahida Khatun is the daughter of Saha Jamal, reliance is placed upon a kabin nama as well as the evidence rendered by a person below whose name there appears a seal to be the Muslim Marriages & Divorces Registrar, Joypur, Dist. Goalpara.

4. The original records at page 64 reveals that the name of the person had not been recorded by the Tribunal and only an illegible signature appears, but below the signature, the seal as afore-stated appears. Be that as it may, the person makes a deposition that Shahida Khatun is the daughter of Saha Jamal of village Hatishila Musalmanpara. The kabin nama also contains the same information.

5. It is stated that Korful Nessa had also deposed before the Tribunal as DW3 that the petitioner proceedee is the daughter of Saha Jamal who in fact is her

younger son.

6. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 4, Goalpara to examine the aforesaid voters' lists of 1966, 1970 and 1985 of village Hatishila Musalmanpara, P.S. Lakhipur in the Goalpara district as well as the kabin nama and the evidence rendered by the Muslim Marriages & Divorces Registrar, Joypur, Dist. Goalpara. The Tribunal to verify as to who had actually rendered evidence as Muslim Marriages & Divorces Registrar, Joypur, Dist. Goalpara and fill up the deposition form in a complete manner. The State respondents in the Home Department through the Superintendent of Police(B), Goalpara may make their own verification and submit a report before the Tribunal.

7. Upon doing the needful, the Tribunal to 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 27.09.2018 in F.T. Case No. FT(G-4) 404/16 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 01.07.2023. 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