

GAHC010312102019



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

Case No. : WP(C)/752/2020

SHARIFAN NESSA
W/O- ABDUL HAMED, VILL. PAKA BETBARI, P.S. BARPETA, DIST.-
BARPETA, 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
MINISTRY OF HOME DEPTT.
DISPUR
GHY.-06.

3:THE DY. COMMISSIONER
BARPETA
ASSAM.

4:THE SUPDT. OF POLICE (B)
BARPETA
ASSAM. PIN- 781301.

5:ELECTION COMMISSION OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI-5

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

07.06.2023

(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, 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. U Das, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Sharifan Nessa had been referred to the Foreigners Tribunal No. 1, Barpeta 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. 47/2017, wherein an opinion dated 22.07.2019 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 1965 of village Bhalukbari Pathar in the present Barpeta district, which contains the name of Mofis Miya son of Bohez Miya at serial No. 254 and that of Jaytun Nessa wife of Mofis Miya at serial No. 255 and both of them are shown to be

residing in the same house No. 84 and it is claimed that Mofis Miya is the father and Jaytun Nessa is the mother of the petitioner. The names of Mofis Miya and Jaytun Nessa also appear in the voters list of 1970 of village Bhalukbari Pathar. Further reference is made to the voters list of 1989 of village Bhalukbari Pathar, which contains the name of Mofijuddin son of Bahejuddin and the voters list of 1997 of village Bhalukbari Pathar, which contains the name of Mofizuddin son of Bohez at serial No. 1007, Jaytan Nessa wife of Mofiz at serial No. 1008 and that of Amir Ali son of Bohez at serial No. 1009. It is claimed that Mofizuddin is the father and Jaytan Nessa is the mother of the petitioner and Amir Ali is the paternal uncle of the petitioner. It is explained that in the voters list of 1989 although Mofizuddin son of Bahejuddin is shown in a correct manner, but the name of Jaytun Nessa wife of Mofij is shown in an incorrect manner as Duyotan Nessa. But at the same time, the name of Amiruddin appears as son of Bahej.

4. Jaytun Nessa and Amir Ali had rendered evidence before the Tribunal as DW-2 and DW-3 respectively, wherein they had stated that the petitioner Sharifan Nessa is the daughter of Mofizuddin and Jaytun Nessa.

5. As the name of Mofizuddin also appears in the voters list of 1965 and 1970 of the same village Bhalukbari Pathar and as the name of Jaytun Nessa also appears along with Mofizuddin, where the name of Amir Ali also appears along with Mofizuddin in the voters list of 1997 of the same village, the evidence rendered by DW-2 and DW-3 would require some examination by the Tribunal.

6. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1965, 1970, 1985 and 1997 of village Bhalukbari Pathar as well as the evidence rendered by the DW-2 and DW-3. In doing so, the respondents in the Home Department may be allowed to further cross-examine the DW-2 and DW-3 to extract the veracity of their evidence. The

respondents in the Home Department may also make their own verification and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

7. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 22.07.2019 and if it goes against the petitioner, consequence as per law shall follow.

8. The petitioner shall appear before the concerned Foreigners Tribunal on 13.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

9. The writ petition is allowed as indicated above.

10. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant