

GAHC010272232018



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

Case No. : WP(C)/8510/2018

BASANTI DEY
W/O- NANTU DEY, D/O- SATISH DAS @ SATISH KUMAR DAS, R/O- VILL-
KALABHANGA, P.S. BARPETA ROAD, DIST- BARPETA, ASSAM, PIN- 781315

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILAK MARG, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

4:THE STATE CO-ORDINATOR OF NRC
ASSAM
DISPUR
GHY-6

5:THE DY. COMMISSIONER
BARPETA ASSAM
PIN- 781301

6:THE SUPERINTENDENT OF POLICE
BARPETA
DIST- BARPETA ASSAM
PIN- 781301

7:THE OFFICER IN CHARGE
BARPETA ROAD P.S.
ASSAM
PIN- 78131

Advocate for the Petitioner : MR. R SARMA, MR. S J SARMAH,MR H BEZBARUA

Advocate for the Respondent : ASSTT.S.G.I., SC, ELECTION COMMISSION.,SC, NRC,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 30.10.2024
(K.R. Surana, J)

Heard Mr. S.J. Sarmah, learned counsel for the petitioner. Also heard Ms. K. Phukan, learned CGC for respondent no.1; Ms. A. Verma, learned standing counsel for the Home Department, respondent nos.2, 6 and 7; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for the respondent no.3; and Mr. P. Sarma, learned Govt. Advocate appearing for respondent no.5.

2. Although the respondent no.4 is an establishment under the Home Department, but the said authority has not yet issued direction to their learned standing counsel for representing them. Accordingly, there is no representation from the respondent no.4.

3. Aggrieved by the opinion dated 07.07.2018, passed by the learned Member, Foreigners Tribunal, 9th, Barpeta in F.T.9th (BPT) Case No. 108/2016, arising out of S.P. Ref. IM(D)T Case No. 3722(A), wherein reference as to whether the petitioner is an illegal migrant was answered in the affirmative, the

present writ petition has been filed under Article 226 of the Constitution of India.

4. Pursuant to the order passed earlier, the record of the Tribunal has been requisitioned and the same is received.

5. We have observed that as per the records, the petitioner has examined herself as DW-1 and her projected mother as DW-2 and the following documents were exhibited:

“Exhibit-A: Photostat copy of a certified copy of voter list of 1966, which is proved in original.

Exhibit- B: Photostat copy of a certificate of Registration, which is proved in original.

Exhibit- C: Photostat copy of a notice issued from the Office of the Tahsildar which is proved in original.

Exhibit-D: Computerized certified copy of voter list of 1997.

Exhibit-E: Photostat copy of a certificate in the name of O.P. issued by the Secretary, Gaon Panchayat, Kalbari, which is proved in original.

Exhibit-F: Photostat copy of a PAN Card, which is proved in original.

Exhibit-G: Photostat copy of an Elector Photo I.D. Card, which is proved in original.

Exhibit-H: Photostat copy of a certified copy of voter list 1971, which is proved in original.”

6. Out of the said exhibited documents, Ext-B is the proved-in original copy of Certificate of Registration, which is issued by the Registration Authority, North Salmara Thana, Abhayapuri on 01.11.1956 bearing Sl. No. 4233. Although the learned Tribunal has referred to the said exhibit in the internal page-3 of the impugned opinion by referring to the documents marked as Ext-B, but the learned Member has not discussed the evidentiary value of the said exhibited document although the said document is a vital document for the petitioner and

non-discussion of the evidentiary value of the said exhibit has caused immense prejudice to the petitioner.

7. Therefore, without any further examination of the correctness of the impugned opinion dated 07.07.2018, referred above, the Court is of the considered opinion that once a document has been exhibited by the proceedee (petitioner), it is incumbent on part of the learned Tribunal to discuss the said evidence and then to render an opinion.

8. Therefore, the Court is inclined to interfere and set aside the opinion dated 07.07.2018, passed by the learned Member, Foreigners Tribunal, 9th, Barpeta in F.T.9th (BPT) Case No. 108/2016.

9. Resultantly, to enable the said learned Tribunal to re-examine the evidence, specifically Exhibit-B, the matter is remanded back to the said learned Tribunal for a fresh examination of the exhibits on record.

10. In the meanwhile, to ensure appearance of the petitioner before the concerned learned Tribunal, we are inclined to direct the petitioner to appear before the Superintendent of Police (Border), Barpeta within 14.11.2024 and on appearance of the petitioner, namely, Basanti Dey before the said authority, the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner as well as documentation as required under the Rules shall be obtained for securing her presence before the learned Tribunal.

11. On the appearance of the petitioner before the Superintendent of Police (Border), Barpeta, the office of the said authority shall issue a certificate to the petitioner about her appearance.

12. The petitioner shall appear before the learned Member, Foreigners

Tribunal, 9th, Barpeta on 27.11.2024 and by producing a certified copy of this order as well as the certificate of appearance before the Superintendent of Police (Border), Barpeta, shall await further instruction from the said learned Tribunal.

13. Let the record of the Tribunal be returned.

14. In the meanwhile, the learned standing counsel for the Home Department shall also transmit a downloaded copy of this order to the Superintendent of Police (Border), Barpeta.

15. In the event the petitioner does not appear before the Superintendent of Police (Border), Barpeta or the learned Tribunal within the time allowed, this order shall lapse by efflux of time and the opinion dated 07.07.2018 shall stand restored.

16. With the aforesaid direction, this writ petition stands closed.

JUDGE

JUDGE

Comparing Assistant