



IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

WP(C) No. 163/2018

Puspa Khatun,
W/O Abdur Rahman,
D/O Sona Ullah,
Village-Guileja, PS-Kalgachia,
District-Barpeta, Assam, Pin-781319.

.....*Petitioner.*

-Versus-

- 1.** The Union of India,
represented by the Secretary to the Ministry of Home Affairs,
New Delhi, Pin-110001.
- 2.** The State of Assam,
represented by the Commissioner & Secretary to the Government
of Assam, Home Department,
Dispur, Guwahati-781006.
- 3.** The Deputy Commissioner, Barpeta,
Dist.-Barpeta, Assam, Pin-781301.
- 4.** The Superintendent of Police (B), Barpeta,
Assam, Pin-781301.
- 5.** The Election Commission of India,
New Delhi, Pin-110001.
- 6.** The State Coordinator,
National Register of Citizens (NRC),
Bhangagarh, Guwahati-781032.

.....*Respondents.*

BEFORE

Mr. H.R.A. Choudhury (Sr. Adv.),
Mr. A.M. Ahmed,
Mrs. H. Ahmed,
Mr. A. Matin.

Asstt.G.I.,
Mr. J. Payeng, SC, FT,
Mr. A. Bhuyan, SC, ECI,
Ms. K. Phukan, Jr. GA, Assam,
Ms. L. Devi, SC, NRC.

29th October, 2021

JUDGMENT AND ORDER (ORAL)

[N. Kotiswar Singh, J.]

Heard Mr. A. Matin, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Asstt. Solicitor General of India, for the respondent No.1 as well as appearing as standing counsel, NRC, for respondent No.6; Mr. J. Payeng, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. A. Bhuyan, learned standing counsel, ECI, appearing for respondent No.5 and Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.3.

2. The present petition has been filed taking various pleas amongst others

that though the petitioner had adduced the evidence of her father as DW-2, who was examined by the learned Tribunal, the said evidence was never considered by the learned Foreigners' Tribunal No.5th, Barpeta, Assam, at the time of rendering the impugned opinion dated 07.12.2017 passed in F.T. Case No.335/2016.

3. We have perused records received. From the original record we observed that one Sona Ulla, aged about 77, had filed an affidavit. The proceedings of the Tribunal also indicate that on 30.10.2017, DW-2 was examined. Perusal of the opinion also shows that the learned Tribunal had recorded in paragraph 3 of the impugned opinion dated 07.12.2017 that to prove the case, the proceedee examined two witnesses including herself and exhibited some documents. We have also further noted that there is no discussion about the evidence of the aforesaid two witnesses in the impugned opinion. In the impugned opinion, the learned Tribunal has merely referred to the documents exhibited and there was no reference or discussion of the oral evidence of the aforesaid two witnesses including the proceedee. Under the circumstances, it is clear that the Tribunal while rendering its opinion on 07.12.2017, did not advert to the evidence of the aforesaid two witnesses.

4. We are of the view that the evidence of a father is highly relevant. As to what extent the said evidence would be applicable in the present case has to be appreciated by the Tribunal. Accordingly, we are satisfied that the learned

Tribunal has not adverted to highly relevant evidences on record which renders its opinion unsustainable in law.

5. In view of the above, we are of the opinion that the matter requires re-consideration by the learned Tribunal and the learned Tribunal will pass a fresh opinion by appreciating all the documents and exhibits by considering these holistically and not in isolation before arriving at the opinion as to whether the petitioner is a foreigner or not in terms of the reference made by the competent authority.

6. Accordingly, we allow this petition by setting aside the impugned opinion dated 07.12.2017 passed by the learned Foreigners' Tribunal No.5th, Barpeta, Assam in F.T. Case No.335/2016. The petitioner will accordingly, appear before the aforesaid Tribunal on or before 30.11.2021 and thereafter, the learned Tribunal will proceed with the matter and pass a fresh opinion in accordance with law.

7. Since the petitioner is already on interim bail, she may be allowed to continue to remain on bail under the same terms and conditions till the fresh opinion is rendered.

Sd/- Malasri Nandi
JUDGE

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant