

GAHC010136512019



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

Case No. : WP(C)/4162/2019

HALIMA KHATUN
D/O- LATE RASUL MIA, W/O- ABDUL KALAM, R/O- VILL- KUTHURIJHAR,
P.O- BARENGABARI, P.S- GOBARDHANA, DIST- BAKSA, BTC, PIN- 781315

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GHY- 06

3:THE DEPUTY COMMISSIONER
BAKSA
PIN- 781367

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

5:THE STATE COORDINATOR
NRC
ASSAM
GUWAHATI- 781005

6:THE SUPERINTENDENT OF POLICE (B)
BAKSA
DIST- BAKSA
PIN- 78136

Advocate for the Petitioner : MR H R A CHOUDHURY

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 31.03.2023

(A.M. Bujor Barua, J)

Heard Ms. P. Ghosh, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 5, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Baksa and Mr. A. Ali, learned counsel for the respondent No. 4, being authorities in the Election Commission of India.

2. The petitioner Halima Khatun was referred to the Foreigners' Tribunal No. 10, Barpeta 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. 340/2016 was registered. The Tribunal rendered its opinion dated 13.09.2018 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 1970 of village Sunbari, Mouza Gobardhana in the Kamrup district wherein at Sl. No. 202 the name of Rasul Mia son of Akbar and at Sl. No. 203 the name of Jariman Nessa wife of Rasul Mia appear and both reside in the same house bearing No.

54. The petitioner claims that Rasul Mia is her father, but apart from a certificate of a Gaonburah, no document is available with the petitioner to substantiate the said claim. However, it is stated that the mother of petitioner Jariman Nessa is still alive.

4. In the circumstance, we remand the matter back to the Foreigners' Tribunal No. 10, Barpeta to examine Jariman Nesssa wife of Rasul Mia whose name appears in the voters' list of 1970 of village Sunbari to establish that she is the mother of the petitioner. In doing so, the State authorities in the Home Department through the Superintendent of Police(B), Baksa may also make a verification and enquiry as to whether Jariman Nessa of village Sunbari has a daughter named Halima Khatun and such evidence be also placed before the Tribunal. The State authorities may also cross-examine Jariman Nessa in the event she is brought in for rendering evidence. Upon such examination, 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 13.09.2018 in F.T. Case No. 340/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 10.05.2023. 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

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Comparing Assistant