

GAHC010094992019



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

Case No. : WP(C)/2871/2019

BHARATI RABIDAS

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.- 781006.

4:THE DY. COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSAM. PIN- 783301.

5:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

6:THE STATE CO-ORDINATOR OF NRC
ASSAM
PO AND PS- BHANGAGARH
GHY.- 781005. DIST. KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. S ISLAM

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

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

JUDGMENT

01.03.2023

[A.M.Bujor Barua,J.]

Heard Mr. A. Hawari, learned counsel for the petitioner; Ms. L. Devi, learned Standing Counsel for the respondent nos. 1 and 6; Mr. T. Pegu, learned Standing Counsel for the respondent no. 2; Ms. A. Verma, learned Standing Counsel for the respondent nos. 3 and 5; and Ms. U. Das, learned counsel for the respondent no. 4.

2. The petitioner, Bharati Rabidas had been referred to the Foreigners Tribunal No. 10, Dhubri for an opinion as to whether she is a person who entered the State of Assam from the specified territory after 25.03.1971 resulting in registration of FT-10/AGM/646/2017. By the order dated 18.09.2018, the Foreigners Tribunal gave an opinion that the petitioner is a foreign citizen who entered the State of Assam subsequent to 25.03.1971. Being aggrieved, this writ petition is instituted.

3. The petitioner relies upon the Voters' List of 1966 of area no. 943 Mouza Balrampur district Kooch Behar in the State of West Bengal wherein at Serial No. 199 the name of Rabidas Ramprasad, son of Sahadeb appears. Rabidas Ramprasad, son of Sahadeb rendered evidence before the Tribunal wherein in examination in chief he stated as extracted :-

“O.P. Bharti Rabidas is my daughter. She was born and brought up at vill – Balarampur, P.O. – Bolairhat, P.S. – Tufanganj, dist – Coochbehar (W.B.).

Sukhiya Rabidas (now deceased) is O.P.’s mother. She is my 1st wife and she was born and brought up at vill – Gauripur.”

4. We have taken note that Ram Proshad Rabidas as a father had deposed before the Tribunal that the petitioner Bharati Rabidas is his daughter and in cross-examination Ram Proshad Rabidas was not confronted with any question or suggestion that Bharti Rabidas is not his daughter. All that the authorities had asked in cross-examination is the age of Ram Proshad Rabidas, how many daughters he has and where he was born. It being so, the evidence in chief of Ram Proshad Rabidas that the proceedee Bharti Rabidas is his daughter remains uncontroverted.

5. We have also taken note that in the verification report leading to the reference against the petitioner, it had been recorded that the address of Bharti Rabidas is at Kaldoba, her husband’s name is Ram Rabidas and she was born on 01.01.1970. The report also stated that the authorities visited the house of the proceedee on several occasions but she could not produce any documents. No information is recorded in the verification report which may indicate the reason as to why the authorities thought that the petitioner is a person who entered the State of Assam subsequent to 25.03.1971. In fact, even the column providing for place of birth is also vacant and not filled up.

6. Conjointly considering the aspect that the verification report itself is incomplete to lead to any conclusion that the petitioner is a person who entered the State of Assam subsequent to 25.03.1971 and further that the evidence of Ram Proshad Rabidas who could prove his citizenship had deposed that the petitioner is his daughter remained uncontroverted, we are of the view that the reference made against the petitioner itself would be untenable in law.

7. Accordingly, the reference as well as the opinion dated 18.09.2018 are interfered and set aside. The petitioner is declared to be a citizen of India and further she should be entitled to all the rights and privileges under the law.

Writ petition stands disposed of in the above terms.
Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant