

GAHC010099122023



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

**Case No. : WP(C)/2629/2023**

VERSUS

THE UNION OF INDIA AND 6 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, NEW DELHI- 110001.

2:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
HOME DEPARTMENT  
DISPUR  
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA  
NIRVACHAN SADAN  
ASHOKA ROAD  
NEW DELHI-110001

4:THE STATE COORDINATOR  
NATIONAL REGISTER OF CITIZENS  
ASSAM  
BHANGAGARH  
GUWAHATI-05  
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER  
BONGAIGAON

ASSAM  
PIN-783380

6:THE SUPERINTENDENT OF POLICE (B)  
BONGAIGAON  
ASSAM  
PIN-783380

7:THE OFFICER IN CHARGE  
MANIKPUR POLICE STATION  
BONGAIGAON  
ASSAM  
PIN-78339

**Advocate for the Petitioner** : MR. M I HUSSAIN

**Advocate for the Respondent** : D.Y.S.G.I.

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

**JUDGMENT & ORDER (ORAL)**

**Date : 17-05-2023**  
**(A.M. Bujor Barua, J)**

Heard Mr. M.I. Hussain, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Coordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 6 and 7, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India and Mr. T.R. Gogoi, learned counsel for the respondent No. 5, being the Deputy Commissioner, Bongaigaon.

2. The petitioner Momtaj Begum was referred to the Foreigners' Tribunal No. 1, Bongaigaon 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 Case No. BNGN/FT/63/10 was registered. In course of the proceeding, the petitioner presented a certificate from the Gaon Panchayat Secretary dated 18.01.2023 and made a prayer that the said certificate be accepted by claiming that it is a new discovery. The Tribunal on being not satisfied that it is a new discovery had rejected the prayer by arriving at its conclusion that the certificate of the Gaon Panchayat Secretary could not be treated as a new discovery.

3. We see no reason not to accept the said view of the Tribunal, but at the same time, when the petitioner is required to discharge her burden under Section 9 of the Foreigners Act, 1946 that she is an Indian citizen, she must be given all opportunities, as may be available, to produce any relevant material which may indicate that she is an Indian citizen. Usually the method adopted is that a person is identified from a given voters' list which may indicate that the said person is an Indian citizen and thereafter prove that the person concerned is the father of the proceedee.

4. In the instant case, the petitioner relied upon the voters' list of 1966 of village Numberpara Part III under Srijangram Circle in the present Bongaigaon district which contains the name of Abubakkar son of A. Sukur at Sl. No. 3. A claim is made that Abubakkar son of A. Sukur of the voters' list of 1966 of village Numberpara Part III is the father of the petitioner. The petitioner accordingly intended to rely upon a certificate of the Gaon Panchayat Secretary which may contain the information that the petitioner is the daughter of Abubakkar of the voters' list of 1966 of village Numberpara Part III.

5. A certificate depicts the existence of a fact which is vouched upon by the person issuing the certificate. In other words, the existing fact that may be reflected in a certificate would have to be within the knowledge of the person

who issues the certificate meaning thereby, either the person concerned is a custodian of a public record from which the information can be derived or the person concerned may have personal knowledge about the existence of the fact.

6. If the petitioner intends to prove through the certificate of the Gaon Panchayat Secretary that Abubakkar of the voters' list of 1966 of village Numberpara Part III is the father of the petitioner, the core requirement would be to examine the person who had issued the certificate to depose before the Tribunal firstly, as to the source of his knowledge and secondly, that as per such knowledge Abubakkar of the voters' list of 1966 of village Numberpara Part III is the father of the petitioner. Irrespective of a certificate, the said deposition can be made by any person, including that of a Gaon Panchayat Secretary, provided the person concerned has appropriate knowledge about the existence of the fact that Abubakkar of the voters' list of 1966 of village Numberpara Part III is the father of the petitioner and such knowledge may flow either from any public record that may be maintained by the person including the Gaon Panchayat Secretary or it is to his personal knowledge and if it is personal knowledge, the circumstance under which the personal knowledge had been acquired also would have to be explained.

7. From such point of view, for the interest of justice and in order to enable the petitioner to discharge the burden under Section 9 of the Foreigners Act, 1946, the petitioner may produce any such person who may have the knowledge, as indicated above that Abubakkar of the voters' list of 1966 of village Numberpara Part III is the father of the petitioner and if any such person is presented, the said person may be allowed to depose before the Tribunal. Once the deposition is made, the respondents in the Home Department through

the Superintendent of Police(B), Bongaigaon may cross-examine such person in order to extract the veracity of such deposition.

8. If the petitioner is relying upon any school certificate, similarly, as laid down by this Court in the case of *Rupa Das Vs. Union of India & Ors.*, reported in *2019 SCC OnLine Gau 5663*, the petitioner may also examine the Headmaster of the school along with the original school records from which the information could have been obtained. The petitioner to appear before the Tribunal on 01.07.2023 for doing the needful. Upon undertaking the process, the Tribunal to pass a reasoned order.

Writ petition stands disposed of as indicated above.

**J U D G E**

**J U D G E**

**Comparing Assistant**