

GAHC010209992019



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

Case No. : WP(C) 6705/2019

1:MAMTAJ BEGUM
D/O LT. SEKANDAR ALI, W/O ABDUL HANNAN, VILL. NO. 1, KUWARI
PHUKURI, UNDER PASCHIM DALGAON MOUZA, P.O. KUWARI PHUKURI,
P.S. KHARUPETIA, (EARLIER IT WAS UNDER DALGAON P.S.) DIST.
DARRANG, ASSAM, PIN-784115

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-10001

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
DEPTT. OF HOME GOVT. OF ASSAM
DISPUR
GUWAHATI
ASSAM
781006

4:THE STATE CO-ORDINATOR
NATIOAL REGISTER OF CITIZENS
ASSAM
ACHYUT PLAZA
BHARALUPAR
BHANGAGARH
G.S. ROAD
GUWAHATI-781005

5:THE DEPUTY COMMISSIONER
DARRANG
MANGALDAI-784215

6:THE SUPERINTENDENT OF POLICE(BORDER)
DIST. JORHAT
JORHAT
ASSAM. 785001

7:MANUAR JAHAN @ MANU JAHAN
S/O MD. SAMINUL HUSSAIN
VILL. TEXI ALI
P.O. SIVASAGAR
P.S. SIVASAGAR
DIST. SIVASAGAR
ASSAM
78564

Advocate for the Petitioner : MR. A K TALUKDAR
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 17-12-2019

Suman Shyam, J

Heard Mr. A.K. Talukdar, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned CGC appearing for the Union of India, Mr. U.K. Nair, learned Sr. standing counsel assisted by Ms. M. Baruah, learned counsel, Foreigners Tribunal, Ms. A. Verma, learned standing counsel, NRC authority and Ms. B. Das, learned standing counsel, Election Commission of India.

This writ petition is directed against the order dated 08-03-2019 passed by the learned Member, Foreigners' Tribunal, Jorhat in connection with case No. FT/SVR/55/2010

whereby the petitioner had been declared as a foreigner. It appears that in support of her claim of Indian citizenship, the petitioner has produced copy of the NRC of 1951, Voters' Lists of 1966 and 1977 and certified copy of Jamabandi to show that the name of her grandfather and father were included in the Voters' List and that there was linkage of the petitioner with her father. However, the learned Tribunal has rejected such evidence adduced by the petitioner.

Mr. Talukdar has produced a copy of the NRC details which, *prima facie*, indicates that the name of the petitioner's mother, her brother and sister have already been included in the NRC. Learned counsel for the petitioner has also submitted that his client was arrested on 19-01-2019 even before the opinion was rendered by the learned Tribunal and since then she has been kept in Detention Centre at Jorhat. The aforesaid fact stands established from the order dated 19-01-2019 passed by the learned Member, Foreigners' Tribunal.

We find that the impugned order declaring the petitioner as foreigner was passed on 08-03-2019. But the petitioner was arrested on 19-01-2019. Therefore, it is apparent that the petitioner was taken into custody even before she was declared as a foreigner. The learned counsel has stated the reason for which the petitioner could not remain present with her counsel on that date which was on account of the marriage of the petitioner's advocate. However, verification of the aforesaid fact would be possible only after receipt of the LCR.

Issue notice returnable in 06 weeks.

Since the parties are already represented, no formal notice is required to be sent in this case.

Extra copies of the writ petition be furnished to the learned standing counsel.

Registry to call for the LCR.

Heard on the prayer of interim relief.

Considering the facts and circumstances of the case in its entirety as well as the documents brought on record, we are of the opinion that the petitioner has succeeded in making out a good case for issuing an interim order in her favour.

We, therefore, direct the Superintendent of Police (Border), Sivasagar to take steps for releasing the petitioner from Detention Centre on furnishing a bond of Rs. 5000/- (Rupees Five Thousand) and one surety of like nature to the satisfaction of the concerned Superintendent of Police, subject to the further condition that the petitioner would report to the concerned Superintendent of Police after every 15 days.

Violation of the above condition would lead to automatic cancellation of the release order.

As a prudent measure, the Superintendent of Police may also take steps for capturing the finger prints and biometrics of iris of the petitioner's eyeballs, if so advised.

List accordingly.

JUDGE

JUDGE

GS

Comparing Assistant