

GAHC010001612020



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

Case No. : WP(C)/142/2020

RASHIDUL ISLAM
S/O- NOZRUL ISLAM, R/O- VILL- KUKURMARA PT-II, P.S. MANKACHAR,
DIST.- SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR GENERAL OF POLICE (ADMN.)
ASSAM
ULUBARI
GHY-07

4:THE DISTRICT MAGISTRATE CUM DY. COMMISSIONER
KAMRUP (M)
DIST.- KAMRUP (M)
ASSAM
PIN- 781001

5:THE DY. COMMISSIONER OF POLICE (B)
KAMRUP (M)
DIST.- KAMRUP (M)
ASSAM
PIN- 781001

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)
GHY
ASSAM
GHY-5

7:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 11000

Advocate for the Petitioner : MR. M KHAN

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

23.06.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2, 3 and 4; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.7 and Ms. U. Das, learned Addl. Senior Government Advocate, Assam, appearing for respondent No.5.

2. The petitioner Rashidul Islam had been referred to the Foreigners' Tribunal No.2, Kamrup(Metro), Guwahati, for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 resulting in registration of F.T. Case No.457/2017. The Tribunal rendered an opinion dated 30.07.2018 declaring the

petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1970 of village Kukurmara Pt.-II, Police Station-Mankachar, in the present Goalpara district, which contains the names of Kalachand Sheikh S/o Abdul at Sl.No.260 and that of Jabeda Khatun Bibi W/o Kalachand at Sl.No.261 and both are residing in the same house No.78. The voters list of 1977 contains the names of Kalachand Sheikh S/o Abdul Dewani at Sl.No.332 and Jabeda Khatun W/o Kalachand at Sl.No.333. The voters list of 1989 of village Kukurmara Pt.-II contain the names of Kalachand S/o Abdul at Sl.No.57, Jabeda Khatun W/o Kalachand at Sl.No.58 and that of Nazrul Hoque S/o Kalachand at Sl.No.59. The voters list of 2005 of village Kukurmara contains the names of Nazrul Islam S/o Kalachand at Sl.No.894 and Joshena Khatun W/o Nazrul Islam at Sl.No.895, whereas the voters list of 2016 of village Kukurmara Pt.-II contains the names of Rashidul Islam S/o Nazrul Islam at Sl.No.560 and that of Akitara Begum is the daughter of Nazrul Hoque at Sl.No.561, who is stated to be the daughter-in-law of Nazrul Hoque. By an order dated 31.03.2023 a report was called for from the Deputy Commissioner of Police (Border), Kamrup(M) upon conducting an enquiry as to whether Nazrul Hoque S/o Kalachand in the 1989 voters list of village Kukurmara Pt.-II and Nazrul Islam S/o Kalachand appearing in the voters lists of 2005 and 2016 are one and the same person. A report dated 10.05.2023 of the Deputy Commissioner of Police (Border), Kamrup(M) has been produced before the Court, which shows that Nazrul Hoque and Nazrul Islam are one and the same person.

4. In view of the above, the matter is remanded back to the Tribunal to examine the voters lists of 1970, 1977, 1989, 1997, 2005 and 2016 of village Kukurmara Pt.-II. The report submitted by the Deputy Commissioner of Police (Border), Kamrup(M) be also made available before the Tribunal for its examination by the Home Department of the Government of Assam. Accordingly, the report produced before the Court is returned back to Mr. G. Sarma, learned special counsel, FT, to

enable him to be presented before the Tribunal. The respondents may make any further verification, if so advised and submit report. Upon doing the needful, the Tribunal shall pass a reasoned order. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.07.2018 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 28.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. Send back the LCR immediately.

7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant