

GAHC010005762018



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

Case No. : WP(C)/296/2018

SAIDUL ISLAM

S/O- LATE ABDUL KHALEQUE, R/O- VILL- SARUCHALA, P.O- AKARABARI,
P.S- MOIRABARI, PIN- 782123, DIST- MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA

REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI

2:THE CHIEF ELECTION COMMISSIONER
ELECTION COMMISSION OF INDIA
ASHOKA ROAD
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY ITS SECRETARY
GOVT OF ASSAM
HOME DEPTT.
DISPUR
GHY- 6

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007

5:HE STATE CO-ORDINATOR
OFFICE OF THE STATE CO-ORDINATOR OF NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA

G S ROAD
BHANGAGARH
GHY- 05

6:THE DEPUTY COMMISSIONER
MORIGAON
ASSAM

7:THE SUPERINTENDENT OF POLICE(B)
MORIGAON
DIST- MORIGAON
ASSAM

8:THE OFFICER-IN-CHARGE
MOIRABARI POLICE STATION
MORIGAON
DIST- MORIGAON
ASSA

Advocate for the Petitioner : MR. K LAHKAR

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

06.06.2023

(AM Bujor Barua, J)

Heard Mr. KM Hasan, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. T Pegu, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Morigaon as well as the Officer-in-Charge

Moirabari Police Station and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Morigaon.

2. The petitioner, namely, Saidul Islam was referred to the Foreigners Tribunal 5th Morigaon for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of Case No.F.T.368/2017 (New Number) corresponding to F.T.10/2017 (Old Number) arising out of F.T. Case No.10/17 dated 16.02.2017 wherein an opinion dated 30.10.2017 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Saruchala PS Lahorighat in the Nagaon district which contains the name of Abdul Khaleque son of Afsar at Sl.No.357 and it is claimed that Abdul Khaleque is the father of the petitioner. The name of Abdul Khaleque son of Afsar appears in the voters list of 1970 of village Saruchala at Sl.No.358. Further reliance is placed on the voters list of 1985 of village Saruchala which contains the name of Abdul Khaleque son of Apsar Ali at Sl.No.206 and that of Saidul Islam son of Abdul Khaleque at Sl.No.209, where both are shown to be residing in the same House No.102. It is claimed that as the name of Saidul Islam and Abdul Khaleque appear together in the same voters list of 1985 of village Saruchala and the name of Abdul Khaleque son of Afsar appears in the voters

list of 1966 and 1970 of village Saruchala, the burden under Section 9 of the Foreigners Act 1946 has been discharged by the petitioner to prove that he is a citizen of India.

5. In view of the above, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the voters list of 1966, 1970 and 1985 of village Saruchala. The Tribunal shall further examine as to whether Abdul Khaleque son of Apsar Ali of the 1985 voters list of village Saruchala and Abdul Khaleque son of Afsar of the 1966 and 1970 voters list of the same village are one and the same person.

6. The respondents in the Home Department may also make their own verification on the aforesaid aspect and also as to whether Saidul Islam son of Abdul Khaleque of the 1985 voters list of village Saruchala and the writ petitioner-proceedee are one and the same person and submit a report before the Tribunal, if so advised.

7. Accordingly, the petitioner shall appear before the Tribunal on 12.07.2023.

8. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 30.10.2017 of the Foreigners Tribunal 5th Morigaon in Case No.F.T.368/2017 (New Number) corresponding to F.T.10/2017 (Old Number) arising out of F.T. Case No.10/17 dated 16.02.2017 and if it is against the petitioner, consequential

action under the law shall follow.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

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

11. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant