

GAHC010016032018



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

Case No. : WP(C)/478/2018

KASEM ALI
S/O LT. PAMAR ALI SHEIKH
R/O VILL- NALDOBA
P.S. ABHAYAPURI
DIST. BONGAIGAON,
ASSAM

VERSUS

UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, NEW DELHI

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

3:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM P.O. AND DIST. BONGAIGAON
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
P.O. DIST. BONGAIGAON
ASSAM

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)

ASSA

Advocate for the Petitioner : MS. R CHOUDHURY

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.08.2023

[Achintya Malla Bujor Barua, J.]

Heard Ms. R. Choudhury, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing for the respondent Nos.1 and 6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.5 and Mr. R. Talukdar, learned Government Advocate, appearing for respondent No.3.

2. The petitioner Kasem Ali had been referred to the Foreigners' Tribunal, Bongaigaon No.2, Abhayapuri, Assam for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 resulting in registration of Case No.BNGN/FT-2/APR/41/16. The Tribunal rendered an opinion dated 18.01.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding the petitioner relies upon the voters list of 1966 of village Chatala, Police Station Baghbor in the present Barpeta district, which contains the names of Pamur Ali S/o Basir at Sl.No.150, Ajiron Nessa W/o Pamur at Sl.No.151 as well as Abdul Rashid S/o Papur Ali at Sl.No.152 and Bahadur Sheikh S//o Pamur Ali at Sl.No.154. The voters list of 1970 of village Chatala also contains the aforesaid information. The voters list of village Chatala (Ka) relied upon contains the names of

Pamur Ali S/o Basiruddin at Sl.No.189, Ajiron Nessa W/o Pamur at Sl.No.190, A Rashid S/o Pamur at Sl.No.191, Bahadur Sheikh S/o Pamur at Sl.No.193 and that of Kasem Ali S/o Pamur at Sl.No.197 and all of them are shown to be residing in the same house No.58. As the name of Kasem Ali appears along with Pamur Ali in the voters list of 1985 of village Chatala and the name of Pamur Ali as indicated above also appears in the voters list of 1966 of village Chatala, a claim is made that the burden under Section 9 of the Foreigners Act, 1946 has been discharged by the petitioner.

4. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966, 1970, 1977 as well as 1985 of village Chatala. The petitioner to produce the complete voters lists of all the aforesaid years before the Tribunal for its examination. The respondents in the Home Department may make their enquiry as to whether Kasem Ali of the 1985 voters list and Kasem Ali the writ petitioner are one and the same person. Upon doing the needful a reasoned order be passed. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 18.01.2018 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 02.09.2023. 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