

GAHC010017562018



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

Case No. : WP(C)/534/2018

MD. FOJOR ALI @ FOJOR
R/O-VILL- HATIMURIA, P.S. MOIRABARI, DIST- MORIGAON, ASSAM, PIN-
782015

VERSUS

THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE DEPTT. OF HOME,
GOVT. OF ASSAM, DISPUR, GHY-6

2:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA
NEW DELHI

3:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
DIST- MORIGAON
ASSAM
PIN-782105

4:THE DEPUTY COMMISSIONER
DIST- MORIGAON
ASSAM
PIN-782105

5:THE CHIEF ELECTION OFFICER OF THE ELECTION COMMISSION OF
INDIA
NIRVACHAN SADAN
ASHOKA RD
NEW DELHI
DELHI-110001

6:THE OFFICE OF THE STATE COORDINATOR OF NATIONAL
REGISTRATION (NRC) ASSAM
REP. BY ITS COORDINATOR
1ST FLOOR ACHYUT PLAZA
BHANGAGARH
GUWAHATI
ASSAM-78100

Advocate for the Petitioner : MR. A BISWAS

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 23.05.2023
(A.M. Bujor Barua, J)

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

2. The petitioner Md. Fojoir Ali @ Fojoir was referred to the Foreigners' Tribunal No. 5, Morigaon for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. F.T.(D) 765/2017 (New Number) corresponding to F.T.(D) 1149/2011 (Old Number) was registered. The Tribunal rendered its opinion dated 29.11.2017 arriving at its conclusion that the

petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Panbari, P.S. Dhing in the Nagaon district which contains the name of Malemuddin son of Kalim at Sl. No. 295. The petitioner also relies upon the voters' list of 1989 of village Panbari, P.S. Dhing in the Nagaon district which contains the name Fojar Ali son of Malemuddin at Sl. No. 566. Accordingly the petitioner claims the burden under Section 9 of the Foreigners Act, 1946 has been discharged. The petitioner further relies upon a Jamabandi in respect of a plot of land at village Panbari which contains the information that by an order dated 04.09.2017 in Mutation Case No. NAG/DHI/2017-18/464/FMUT the land had been mutated in the name of Fojar Ali son of Malemuddin, amongst others, in place of Malemuddin which again gives a prima facie indication that the petitioner Fojar Ali may be the son of Malemuddin of village Panbari.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 5, Morigaon to examine the aforesaid voters' lists of 1965 and 1989 of village Panbari containing the names of Malemuddin son of Kalim and Fojar Ali son of Malemuddin as well as the Jamabandi.

5. It is noticed that that in the voters' lists presented before the Court the name of the mother of the petitioner nowhere appears and the linkage through the mother would also be vital for the petitioner.

6. The petitioner to produce the complete voters' lists of village Panbari from the year 1965 up to the year 1989 before the Tribunal which may also include the name of the mother of the petitioner as well as the Jamabandi. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Morigaon may also make their own verification as

to whether Fojar Ali son of Malemuddin of the voters' list of 1989 of village Panbari and the petitioner proceedee are one and the same person and thereafter submit the report before the Tribunal.

7. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 29.11.2017 in Case No. F.T.(D) 765/2017 (New Number) corresponding to F.T.(D) 1149/2011 (Old Number) and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 07.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

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Comparing Assistant