

GAHC010020662018



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

Case No. : WP(C)/585/2018

ABDUL KHALEK
S/O LT. AHED ALI @ WAHED ALI
VILL- HATIKHUTI
P.S. KACHUA, PIN- 782426, DIST. NAGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF INDIA,
HOME DEPARTMENT, NEW DELHI-1, INDIA.

2:THE STATE OF ASSAM

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

3:THE STATE CO -ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5
ASSAM

4:ASSAM STATE ELECTION COMMISSION
TO BE REP. BY THE COMMISSIONER
BELTOLA- BASISTHA ROAD

HOUSEFED COMPLEX

GUWAHATI-6
ASSAM

5:THE DEPUTY COMMISSIONER

NAGAON
DIST. NAGAON

ASSAM

6:THE SUPERINTENDENT OF POLICE (B)

NAGAON
DIST. NAGAON
ASSAM

7:THE STANDING COUSEL

FOREIGNERS TRIBUNALS
FOR NAGAON
DISTRICT
ASSA

Advocate for the Petitioner : MR. E AHMED

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

24.05.2023

(A.M. Bujor Barua, J)

Heard Mr. Z Hammad, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. NK Das, learned

counsel for the Deputy Commissioner, Nagaon.

2. The petitioner Abdul Khalek had been referred to the Foreigners Tribunal No. 2, Nagaon for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of F.T. Case No. 1967/2011, wherein an opinion dated 30.11.2017 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1965 of village Kadamoni Pather, police station Dhing in the Nagaon district, which contains the name of Ahed Ali son of Md. Jafar Sheikh at serial No. 375. Reliance is also placed on the voters list of 1970 of village Kadamoni Pather, which contains the name of A. Khalek, son of Ahed at serial No. 512. The petitioner claims that Abdul Khalek son of Ahed of the voters list of 1970 of village Kadamoni Pather is the petitioner himself.

4. If Abdul Khalek of the voters list of 1970 of village Kadamoni Pather is the petitioner himself, the petitioner has discharged the burden under section 9 of the Foreigners Act that he is an Indian citizen inasmuch as, his own name appears in the voters list of 1970 of village Kadamoni Pather.

5. In view of the above, the matter is remanded back to the Tribunal to examine as to whether A. Khalek of the voters list of 1970 of village Kadamoni Pather and the present writ petitioner Abdul Khalek are one and the same person. The respondents in the Home Department may make their own verification as required by the law and submit a report before the Tribunal. Upon doing the needful, the Tribunal may pass its reasoned order.

6. If the reasoned order is in favour of the petitioner, the same shall prevail

over the earlier opinion dated 30.11.2017 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the concerned Foreigners Tribunal on 10.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant