

GAHC010021392018



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

Case No. : WP(C)/711/2018

KURBAN ALI
S/O LT. GOLAM HUSSAIN @ GOLAP HUSSAIN
VILL- KALIKURA, P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM,
PIN- 783384.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS,
NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER

BANGAIGAON
DIST. BANGAIGAON
ASSAM- 783380.

4:THE SUPERINTENDENT OF POLICE (B)

BANGAIGAON
ASSAM- 783380.

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI-110001.

6:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
BHANGAGARH
PIN - 781032

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

ORDER

13.03.2023

(AM Bujor Barua, J)

Heard Mr. A Matin, learned counsel for the petitioner. Also heard Mr. PK Medhi, learned CGC for the respondents in the Union of India, Ms. L Devi, learned counsel for the authorities under the NRC, Mr. T Pegu, learned counsel for the authorities under the Election Commission of India, Mr. G Sharma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Bongaigaon and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Bongaigaon.

2. The petitioner, Kurban Ali, son of Golam Hussain @ Golap Hussain was referred to the Foreigners Tribunal No.2 Bongaigaon for rendering an opinion as

to whether he is a person who had entered the State of Assam subsequent to 25.03.1971 resulting in the registration of F.T. Case No.BNGN/FT-2/556/16 arising out of Ref: BNGN P.E. No.254/08 against him.

3. By the order dated 08.01.2018 of the Foreigners Tribunal No.2 Bongaigaon in F.T. Case No.BNGN/FT-2/556/16 arising out of Ref: BNGN P.E. No.254/08, an opinion was rendered that the petitioner is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971.

4. The petitioner relies upon a voters list of 1966 of village Balarchar P.S. North Salmara in the Goalpara district containing the name Golam Husen, son of Jinod Ali at Sl. No.105. The petitioner also refers to the voters list of 1970 of village Balarchar P.S. Abhayapuri in the Goalpara district which also contains the name of Golam Husen, son of Jinad Ali at Sl.No.105. Thereafter, the petitioner refers to the voters list of 1997 of village 172 Kalikura Part II which contains the name of Hakimuddin Molla, son of Jagar Ali Sheikh at Sl. No.314 and that of Rohima Khatun wife of Hakimuddin at Sl.No.315.

5. The petitioner further refers to the voters list of 2006 of village 172 Kalikura Part II containing the name of Rahima Bewa wife of Hakimuddin Molla at Sl.No.340 and Kurban Ali son of Golap Uddin at Sl.No.341, both in respect of House No.10 which information is also contained in the voters list of 2010 of village 172 Kalikura Part II. The petitioner also claims that he is the son of Golam Husen, son of Jinod Ali of 1966 and 1970 voters list of village Balarchar P.S. North Salmara in the Goalpara district, but after his father Golam Husen

died, his mother Rahima Khatun married another person, namely, Hakimuddin of village 172 Kalikura. Thereafter the petitioner along with his mother Rahima Khatun and step father Hakimuddin have been residing in village 172 Kalikura Part II. After the death of Hakimuddin, the mother of the petitioner is shown as Rahima Bewa, wife of Hakimuddin at Sl.No.340 and that of the petitioner Kurban Ali, son of Golap Uddin at Sl.No.341 and both of them are residing in the same House No.10. If the aforesaid information is correct, the petitioner may have established his linkage with his father Golam Husen, son of Jinod Ali of the 1966 voters list at Sl. No.105 in respect of village Balarchar P.S. North Salmara in the Goalpara district. But, however, as adequate materials are not available to enable the Court to arrive at its conclusion that the petitioner is the son of Golam Husen of village Balarchar, the matter stands remanded back to the Tribunal to enable the petitioner to produce any further material or evidence which may establish that his mother is Rahima Bewa wife of Hakim Uddin Molla of 2006 voters list in respect of village 172 Kalikura Part II whose name also appears in the voters list of 1997 of village 172 Kalikura Part II along with Hakimuddin Molla and that the earlier husband of Rahima Begum @ Rahima Bewa was Golam Husen, son of Jinad Ali of village 359 Balarchar of the 1966 and 1970 voters list.

6. We also take note of the fact that in the voters list of 2006 of village 172 Kalikura Pt.II, the name of Rahima Bewa wife of Hakim Uddin Molla appearing at Sl.No.340 and that the petitioner Kurban Ali, son of Golap Uddin appearing at Sl.No.341 are from the same House No.10.

7. Accordingly, the matter stands remanded back to the Tribunal and the

petitioner shall appear before the Tribunal on 12.04.2023 and shall be allowed to produce any relevant materials to establish that his mother is Rahima Khatun wife of Hakim Uddin Molla of 2006 voters list of village 172 Kalikura Pt.II whose name also appears in the 1997 voters list of village 172 Kalikura Pt.II and that the husband of Rahima Khatun @ Rahima Bewa was earlier Golam Husen son of Jinod Ali of the 1966 voters list of village Balarchar P.S. North Salmara in the Goalpara district.

8. The Tribunal upon considering the evidence and materials on record shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the order dated 08.01.2018 of the Foreigners Tribunal No.2 Bongaigaon in F.T. Case No.BNGN/FT-2/556/16 arising out of Ref: BNGN P.E. No.254/08 and if it is against the petitioner, consequential action shall follow.

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

10. Send back the LCR immediately.

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

JUDGE

JUDGE

Comparing Assistant