

GAHC010021992023



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

Case No. : WP(C)/589/2023

MD KUTUBUDDIN AHMED
S/O- MD. RAJAB ALI,
R/O- RANGALOO SUTARGAON,
P.S.- NAGAON SADAR,
DIST.- NAGAON (ASSAM). PIN- 782003.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF HOME AFFAIRS,
NEW DELHI.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY

HOME AND POLITICAL (B) DEPARTMENT

DISPUR- 781006.

3:THE FOREIGNERS TRIBUNAL 1ST NAGAON
NAGAON
ASSAM.
PIN- 782140.

4:THE SUPERINTENDENT OF POLICE (BORDER)
NAGAON
ASSAM. PIN- 782001.

5:THE DEPUTY COMMISSIONER
NAGAON
ASSAM

PIN- 782001.

6:THE OFFICER-IN-CHARGE
P.S.- NAGAON (SADAR)
DIST.- NAGAON
ASSAM

PIN- 782001

Advocate for the Petitioner : MR B C DAS

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

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

ORDER

29.03.2023

(AM Bujor Barua, J)

Heard Ms. MD Medhi, 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. AI Ali, 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) Nagaon as well as the Officer-in-Charge PS Nagaon (Sadar) and Mr. TR Gogoi, learned Government Advocate for the Deputy Commissioner, Nagaon.

2. The petitioner, Md. Kutubuddin Ahmed, was referred to the Foreigners Tribunal 1st Nagaon, 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 F.T. Case No.809/2009 wherein an opinion dated 17.11.2022 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. The petitioner relies upon the voters list of 1965 of village Salnabori, Mouza Batadraba, PS Dhing which contains the name of Jaimat Ali Khan, son of Masum Kha at Sl.No.507 and claims that Jaimat Ali Khan is the great grandfather of the petitioner. The petitioner also relies upon the voters list of 1970 of village Salnabori, Mouza Batadraba, PS Dhing which contains the name of Md. Akam Ali, son of Jaimat at Sl.No.583 and that of Musstt. Khateja Banu wife of Akram at Sl. No.584 and both are shown to be residing in the same House No.55.

5. The petitioner thereafter relies on the voters list of 1989 of village Salnabori, Mouza Batadraba, PS Dhing which contains the name of Razab Ali, son of Akam Ali at Sl. No.465 and that of Mazida wife of Razabali at Sl.No.466 and both are shown to be residing in the same House No.145. Akum Ali is claimed by the petitioner to be his grandfather and Razab Ali is claimed to be the father of the petitioner.

6. The petitioner again relies upon the voters list of 2013 in respect of village Rangoloo Part 1, Sutargaon which contains the name of Kutubuddin, son of

Rajab Ali at Sl. No.1287. The petitioner also relies upon a school certificate issued by the Headmaster Rangaloo High School dated 18.03.2017 which contains the information that Md Kutub Uddin is the son of Rajab Ali of village Rangaloo Sutargaon, PO: Jumarmur, PS Sadar in the Nagaon district.

7. We have noticed that the voters list of 1965, 1970 and 1989 in respect of Jaymat Ali Khan and Rajab Ali are of Salnabori, whereas the school certificate dated 18.03.2017 as well as the voters list of 2013 shows the name of Kutubuddin, son of Rajab Ali in respect of village Rangaloo Part 1 Sutargaon. In the circumstance, a question would arise as to why there is a difference in the name of villages.

8. It has been explained by the learned counsel for the petitioner that Rajab Ali around the year 1989 had shifted from village Salnabori to village Rangaloo Part 1 Sutargaon.

9. Therefore, we required the respondents in the Election Commission of India to produce the upward and downward voters list of village Salnabori after 1989 and that of village Rangaloo Part 1 Sutargaon prior to 1989 in order to verify as to whether the name of Rajab Ali continued to exist in the voters list of village Salnabori after 1989 i.e., the period when the shifting had taken place and further as to whether the name of Rajab Ali appeared in the voters list of Rangaloo prior to 1989.

10. Mr. AI Ali, learned counsel for the Election Commission of India has

produced the downward and upward voters list of both villages, i.e., Salnabori and Rangaloo Part 1 Sutargaon as required by the Court. A reading of the voters list produced indicates that after the year 1989 the name of Rajab Ali did not appear any further against village Salnabori, whereas prior to 1989, the name of Rajab Ali did not appear in respect of the village Rangaloo Part 1 Sutargaon. The aforesaid information gives an indication that the claim that Rajab Ali had shifted from village Salnabori to village Rangaloo Part 1 Sutargaon in and around the year 1989 may have some relevance.

11. In view of the above, the matter stands remanded back to the Tribunal to examine the aforesaid aspect and the petitioner may produce all the relevant voters list as has been produced in the present writ petition for examination of the Tribunal.

12. Accordingly, the petitioner shall appear before the Tribunal on 06.05.2023.

13. The Tribunal after examining the voters list as indicated above 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 17.11.2022 of the Foreigners Tribunal 1st Nagaon in F.T. Case No.809/2009 and if it is against the petitioner, consequential action under the law shall follow.

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

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

JUDGE

JUDGE

Comparing Assistant