

GAHC010026982020



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

Case No. : WP(C)/1003/2020

MD. JAFFAR ALI @ JAFAR ALI
S/O MD. JINNAT ALI, TEMPORARY R/O VILL-N.K. DARRANGA, P.S.-
TAMULPUR, DIST-BAKSA, ASSAM, PIN-7813, P/R/O VILL-CHIKNIBARI, P.S.-
TAMULPUR, DIST-BAKSA, ASSAM, PIN-781376

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE HOME SECRETARY, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW DELHI, PIN-110001

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE SUPERINTENDENT OF POLICE (BORDER)
BAKSA
ASSAM
PIN-781372

4:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN-781005

5:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
INDIA
PIN-110001

6:THE MEMBER
FOREIGNERS TRIBUNAL
BAKSA
PIN-78137

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 27.04.2023
(AM Bujor Barua, J)

Heard Mr. S Dey, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 3 and 6 being the authorities under the Home Department of Government of Assam and Mr. AI Ali, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Jaffar Ali @ Jafar Ali had been referred to the Foreigners Tribunal, Baksa 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 FT Case No. 2245/Baksa/2016. The Tribunal rendered

an opinion dated 27.09.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved this writ petition is instituted.

4. In the writ petition the petitioner relies on the voters' list of 1965 of village Chiknibari PS Rangia in the Kamrup district which contains the name of Abdul Matleb, S/O Abasor at Sl. No. 49 and that of Tulabjan Bibi, W/O Abdul at Sl. No. 50 and both are shown to be residing in the same house no. 19. The petitioner also relies on the voters' list of village Chiknibari of the year 1989 which contains the name of Md. Jinnat Ali, S/O Md. Abdul Matleb at Sl. No. 356, Sayeda Khatun, W/O Jinnat Ali at Sl. No. 357, Abdul Matleb, S/O Late Abbas at Sl. No. 361 and that of Tulabjan, W/O Abdul Matleb at Sl. No. 362.

5. As the name of Abdul Matleb, S/O Abasor appears in the voters' list of 1965 of village Chiknibari, it is established that he is a citizen of India and as the names of Jinnat Ali, S/O Abdul Matleb and Abdul Matleb together appear in the voters' list of 1989 of village Chiknibari, a claim is made that Jinnat Ali is also a citizen. A further reliance is placed on the voters' list of 2013 in respect of village Chiknibari which contains the name of Md. Jinnat Ali, S/O Mota Ali at Sl. No. 406 and that of Jafar Ali, S/O Jinnat Ali at Sl. No. 408. It is claimed that as the names of Jinnat Ali, S/O Mota Ali and Jafar Ali, S/O Jinnat Ali appear together in the same voters' list of 2013 of Chiknibari village and that as Jinnat Ali has proved that he is a citizen through his father Md. Abdul Matleb, a claim is made that Jafar Ali is also a citizen.

6. If Abdul Matleb, Jinnat Ali and Jafar Ali as provided in the three voters' lists are the grandfather, father and son and all of them are of village Chiknibari, a prima facie view can be formed that Jafar Ali of the voters' list of 2013 of village Chiknibari is also a citizen. But a question remains that the notice has been

issued to Jaffar Ali, S/O Jinnat Ali of village N.K. Darranga, therefore, a further determination would be required as to whether Jaffar Ali, S/O of Jinnat Ali of village N.K. Darranga and the Jafar Ali, S/O Jinnat Ali of the voters' list of 2013 of village Chiknibari are one and the same person.

7. Accordingly, the matter is remanded back to the Tribunal to enable the petitioner to produce any relevant material to establish that Jafar Ali, S/O Jinnat Ali of the voters' list of 2013 of village Chiknibari and Jaffar Ali, S/O Md. Jinnat Ali of village N.K. Darranga are one and the same person. The respondents in the Home Department may also make their own verification as to whether the two persons are one and the same person and accordingly, submit a report before the Tribunal. The respondents may also verify as to whether Jinnat Ali, S/O Mota Ali of the voters' list of 2013 of village Chiknibari and Jinnat Ali, S/O Abdul Matleb of the votes' list of 1989 of village Chiknibari are one and the same person and accordingly, submit a report before the Tribunal. Upon undertaking the aforesaid exercise, a reasoned order be passed by the Tribunal.

8. The petitioner to appear before the Tribunal on 12.06.2023.

9. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 27.09.2019 passed in F.T. Case No. 2245//Baksa/2016 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant