

GAHC010029852019



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

Case No. : WP(C)/1012/2019

NAJIR ALI
S/O. LT. JASIMUDDIN MIAH, VILL. BILASIPARA GAON, P.S. BARPETA
ROAD, DIST. BARPETA, ASSAM.

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

4:THE DY. COMMISSIONER

BARPETA
DIST. BARPETA
ASSAM-781301.

5:THE SUPDT. OF POLICE (B)

BARPETA
DIST. BARPETA
ASSAM-781301.

6:THE STATE CO-ORDINATOR OF NRC

ASSAM
P.O. AND P.S. BHANGAGHAR
GUWAHATI-781005
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR. S ISLAM

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

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

ORDER

Date : 21.07.2023
(AM Bujor Barua, J)

Heard Mr. S Islam, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Mr. T Pegu, learned counsel for the respondent no. 2 being the authorities under the Election Commission of India, Ms. A Verma, learned counsel for the respondents no. 3 and 5 being the authorities under the Home Department of Government of Assam and Ms. K Phukan, learned counsel for the respondent no. 4 being the Deputy Commissioner, Barpeta.

2. The petitioner Najir Ali had been referred to the Foreigners' Tribunal No. 9, Barpeta for rendering an opinion as to whether he is a foreigner under the

Foreigners Act, 1946, resulting in registration of F.T.9th (BPT) Case No. 260/2015. The Tribunal rendered an opinion dated 15.11.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1965 of village Bilasipara Police Station Sarbhog in the present Barpeta district which contains the names of Jasimuddin Miah S/O Nathu Miah at Sl. No. 20 and that of Rupjan Nessa W/O Jasimuddin at Sl. No. 21 and it is claimed that Jasimuddin Miah is the father and Rupjan Nessa is the mother of the petitioner. Reliance is also placed upon a voters' list of 1997 of village KA) Bilshipara KHA) Baragua which contains the names of Rupjan Bewa W/O Jasimuddin and that of Najir Ali S/O Jasim respectively at Sl. Nos. 905 and 990.

5. As the name of Najir Ali appears along with the Rupjan Bewa and the name of Rupjan Bewa appears along with the name of Jasimuddin Miah in the voters' list of 1965 of village Bilasipara it is claimed that the burden under Section 9 of the Foreigners Act, 1946 has been discharged by the petitioner.

6. The records also reveal a jamabandi in respect of a plot of land at village Baragua which contains the information that land had been mutated in favour of Najir Ali S/O Jasimuddin in place of Jasimuddin which again may indicate that Najir Ali is the son of Jasimuddin but the jamabandi is in respect of village Baragua whereas the voters' list of 1965 is in respect of village Bilasipara. But from the voters' list of 1997 it is noticed that the voters' list is a common votes' list for village Bilashipara alias Baragua which may be an indication that the two villages may be contiguous to each other warranting a common voters' list.

7. In view of the above, the matter stands remanded back to the Tribunal to

examine the voters' list of 1965 of village Bilasipara and 1997 village KA) Bilashipara KHA) Baragua as well as the jamabanid in respect of a plot of land at village Baragua. The petitioner to produce the complete voters' lists of village Bilashipara from the years 1965 upto 1997 for the examination of the Tribunal as to whether there is a continuity in the name of the voters' list. The respondents in the Home Department may make their own enquiry and verification and thereafter, submit a report before the Tribunal. Upon doing the needful, a reasoned order be passed by the Tribunal.

8. The petitioner to appear before the Tribunal on 16.08.2023.

9. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 15.11.2018 passed in F.T.9th (BPT) Case No. 260/2015 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 disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant