

GAHC010030692018



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

Case No. : WP(C)/1045/2018

MD. RAHIM ALI
S/O. HASEM ALI @ ABDUL HATEM, VILL. SATBAINIRTUP, MOUZA-
HOWLY, P.S. HOWLY, DIST. BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.

3:THE DY. COMMISSIONER

BARPETA
DIST. BARPETA
ASSAM

4:THE SUPDT. OF POLICE (B)

BARPETA
DIST. BARPETA
ASSAM

5:ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSIONER

NEW DELHI

6:THE STATE COORDINATOR NATIONAL REGISTER OF CITIZEN (NRC)

BHARALUPAR
BHANGAGARH
GUWAHAT

Advocate for the Petitioner : MR. R S CHAUHAN

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

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

ORDER

Date : 29.03.2023
(AM Bujor Barua, J)

Heard Mr. RS Chauhan, learned counsel for the petitioner. Also heard Mr. PK Medhi, learned counsel for the respondent No. 1 being the authorities under the Union of India, Mr. G Sarma, learned counsel for the respondents No. 2 and 4 being the authorities under the Home Department of the Government of Assam, Mr. TR Gogoi, learned counsel for the respondent no. 3 being the Deputy Commissioner, Barpeta, Mr. AI Ali, learned counsel for the respondent no. 5 being the Election Commission of India and Ms. L Devi, learned counsel for the respondent no. 6 being the authorities under the NRC.

2. The petitioner Rahim Ali had been referred to the Foreigners' Tribunal No. 10, Barpeta 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. 336/2016. An order/opinion dated 12.12.2017 had been rendered by the Tribunal 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 1966 of village Satboinirtup PS Barpeta in the present Barpeta district which contains the name of Abdul Hatem, S/O Akkel at Sl. No. 29. The petitioner also refers to the voters' list of 1994 of village Satboinirtup wherein the name of Hasem Ali, S/O Akkel appears at Sl. No. 723 and that of Rahim Ali, S/O Hasem at Sl. No. 725 and both of them are shown to be residing at the same house No. 208. The petitioner claims that Hasem Ali of 1994 voters' list and Abdul Hatem of 1966 voters' list are one and the same person and it is only a mistake in the depiction of the name.
5. If Abdul Hatem of the 1966 voters' list and Hasem Ali of 1994 voters' list are one and the same person and the name of the petitioner having appeared along with Hasem Ali of the 1994 voters' list, the petitioner may have prima facie discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is a citizen of India. But however, a question would remain as to whether Abdul Hatem of 1966 voters' list and Hasem Ali of 1994 voters' list are one and the same person, where it is noticed that both are son of Akkel.
7. The petitioner in order to establish that Abdul Hatem of 1966 voters' list and Hasem Ali of 1994 voters' list are one and the same person, the complete voters' list of village Satboinirtup from the year 1966 upto the year 1994 be produced before the Tribunal. The respondents to also make a verification as to whether Abdul Hatem of 1966 voters' list and Hasem Ali of 1994 voters' list are one and the same person upon such material being produced. Further verification be made by the State authorities as to whether the proceedee Rahim Ali and Rahim Ali of the voters' list of 1994 of village Satboinirtup are one and the same person, if necessary by visiting the house of Rahim Ali of the

voters' list of 1994 of village Satboinirtup.

8. Accordingly, the matter stands remanded back to the Tribunal. Upon such material being produced the Tribunal to pass a reasoned order.

9. The petitioner to appear before the Tribunal on 06.05.2023.

10. If the reasoned order is in favour of the petitioner, the same may prevail over the opinion/order dated 12.12.2017 passed in F.T. Case No. 336/2016 and if against, consequence under the law is applicable to the petitioner.

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

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant