

GAHC010031652018



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

Case No. : WP(C)/1007/2018

DILUWAR HUSSAIN
S/O MD. ABDUL ZALIL
R/O VILL- MONSHANGAM
P.S. KALIGANJ, P.O. RAKESNAGAR
DIST. KARIMGANJ, ASSAM
PIN - 788701.
PRESENTLY RESIDING AT
C/O SAMSULHUSSAIN
R/O IVLL- LUTHURI GAON
P.S. SIMALUGURI
DIST. SIVSAGAR, ASSAM, PIN - 785686.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS,
NEW DELHI.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI -6.

3:THE DEPUTY COMMISSIONER OF SIVSAGAR
DIST. SIVASAGAR
ASSAM
PIN- 785686

4:THE CHIEF ELECTION OFFICER
OF THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN

ASHOKA ROAD
NEW DELHI
DELHI-110001.

5:THE OFFICE OF THE STATE COORDINATOR OF NATIONAL
REGISTRATION (NRC)
ASSAM
REP. BY ITS COORDINATOR
1ST FLOOR ACHYUT PLAZA
BHANGAGARH
GUWAHATI
ASSAM - 781005.

6:THE SUPERINTENDENT OF POLICE (BORDER)
SIVSAGAR
DIST. SIVSAGAR
ASSAM
PIN - 785640

7:THE OFFICER-IN-CHARGE
SIVSAGAR POLICE STATION
DIST. HOJAI
ASSAM
PIN - 785686

Advocate for the Petitioner : MR I AHMED
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

28.04.2023

(A.M. Bujor Barua, J)

Heard Mr. I Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. PK Medhi, learned

counsel for the Deputy Commissioner, Dhubri.

2. The petitioner Dilwar Hussain had been referred to the Foreigners Tribunal, Jorhat 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 (SVR) Case No. 45/2014, wherein an opinion dated 27.12.2017 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner refers to a birth certificate issued by the Director of Health Services, Assam which contains the information that Dilwar Hussain is the son of Abdul Jalil and Sayna Begum and the place of birth is Monoshangon. The petitioner relies on the voters list of 1966 of village Monoshangon which contains the name of Sek Rakib Ali son of Sek Ahmad Ali at serial No. 58. The petitioner also refers to the voters list of 1989 of village Monoshangon which contains the name of Rakib Ali son of Ahmad Ali at serial No. 40 and that of Jalil Uddin son of Rakib Ali at serial No. 46 and both of them are shown to be residing in the same house No. 15. The petitioner states that Jalil Uddin of the voters list of 1989 of village Monoshangon and Abdul Jalil whose name appears in the birth certificate of the petitioner, are one and the same person.

4. If the statement made is correct, the petitioner may have discharged the burden under section 9 of the Foreigners Act, 1946.

5. In view of the above, the matter is remanded back to the Tribunal to examine the voters list of 1966 and 1989 of village Monoshangon containing the name of Rakib Ali and Jalil Uddin as well as the birth certificate in respect of Dilwar Hussain which contains the information that his father is Abdul Jalil and

also arrive at a conclusion as to whether Abdul Jalil of the birth certificate and Jalil Uddin of the voters list of 1989 are one and the same person and thereafter pass a reasoned order thereon. The State authorities through the Home Department may also make their own verification as to the correctness and authenticity of the information contained in the voters list as well as the birth certificate and also whether Abdul Jalil and Jalil uddin are one and the same person and whether the petitioner proceedee Diluwar Hussain and the Dilwar Hussain referred in the birth certificate are also the same person.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.12.2017 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the Foreigners Tribunal, Jorhat on 07.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

10. Let a copy of this order be furnished to Ms. A. Verma, learned counsel for the respondents in the Home Department, Government of Assam.

JUDGE

JUDGE

Comparing Assistant