

GAHC010032322018



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

Case No. : WP(C)/1037/2018

ABDUL HAI @ ABDUL HYE AND 6 ORS.
S/O. LT. NUR HUSSAIN, VILL. HUGALTOLI, P.S. LAHARIGHAT, DIST.
MORIGAON, ASSAM.

2: MUSSTT. RAHIMA KHATUN
W/O. ABDUL HAI @ ABDUL HYE
VILL. HUGALTOLI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM.

3: AMIR HAMJA
S/O. MD. ABDUL HAI @ ABDUL HYE
VILL. HUGALTOLI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM.

4: ABU HANIFA
S/O. MD. ABDUL HAI @ ABDUL HYE
VILL. HUGALTOLI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM.

5: FATEMA KHATUN @ FATEMA
D/O. MD. ABDUL HAI @ ABDUL HYE
VILL. HUGALTOLI
P.S. LAHARIGHAT
DIST. MORIGAON
ASSAM.

6: MUKTAJUL
BEING MINOR REP. BY PETITIONER NO.2

7: RIJUWARA KHATUN
BEING MINOR
REP. BY PETITIONER NO.

VERSUS

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

2:THE STATE OF ASSAM

REP. BY THE SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.

3:THE DY. COMMISSIONER

DIST. MORIGAON
ASSAM

4:THE SUPDT. OF POLICE (B)

MORIGAON
DIST. MORIGAON
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 CHOUHAN

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

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

ORDER

10.04.2023

[A.M.Bujor Barua, J.]

Heard Mr. R.S. Chouhan, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent no. 1; Mr. G. Sarma, learned counsel for the respondent nos. 2, and 4; Ms. U. Das, learned counsel for the respondent no. 3; and Mr. A.I. Ali, learned counsel for the respondent no. 5.

2. The petitioner no. 1 Abdul Hai @ Abdul Hye had been referred to the Foreigners' Tribunal 5th Morigaon, 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. 94/2015 (New) corresponding to F.T. Case No. 896/2012 (Old), wherein an opinion dated 28.07.2017 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ petition the petitioner relies on the Voters' List of 1966 and 1971 of village Solmari Mauza – Moirabari in the Nagaon district, which contains the name of Nur Hussain, son of F. Joba Sk. at serial no. 279 and at serial no. 430, respectively. The petitioner also relies on the Voters' List of 1989 of village Solmari which contain the name of Md. Nur Hussain at serial no. 16 and that of Md. Abdul Hai at serial no. 18 and both of them are shown to be residing in the same house no. 7. Accordingly, the petitioner no. 1 Abdul Hai claims that he has discharged the burden to prove that he is a citizen of India.

4. In respect of the petitioner no. 1 Abdul Hai, the matter is remanded

back to the Foreigners' Tribunal 5th Morigaon to examine the Voters' List of 1966 - 1989 of village Solmari.

5. Before the Tribunal, the petitioner to produce the complete Voters' List of 1966 - 1989 of village Solmari.

6. In respect of the petitioner no. 2 namely, Musstt. Rahima Khatun who is the wife of the petitioner no. 1, appropriate materials may be produced before the Tribunal to show that Musstt. Rahima Khatun herself is a citizen of India by establishing her citizenship through her father. The matter accordingly remanded back to the Tribunal for consideration as indicated above.

8. The home department shall also verify as to whether Abdul Hai, the petitioner no. 1 and Abdul Hai of the Voters' List of 1989 of village Solmari are one and the same person.

9. Depending on the citizenship as may be declared in respect of the petitioner no. 1, the citizenship of the other petitioners shall also follow. But in respect of the petitioner no. 2 she may render appropriate materials before the Tribunal to prove her own citizenship.

10. The petitioners to appear before the Tribunal on 26.05.2023.

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