

GAHC010032492021



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

Case No. : WP(C)/1344/2021

AKBAR ALI
S/O- LT. HAKIM UDDIN, R/O- VILL- BAHMURA, P.S. AND DIST.- BARPETA,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

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

4:THE DY. COMMISSIONER
BARPETA
P.O. AND DIST.- BARPETA
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND DIST.- BARPETA
ASSAM
PIN- 781310

6:THE NATIONAL REGISTER OF CITIZEN
REP. BY THE STATE COORDINATOR
ACHYUT PLAZA
BHANGAGARH
GHY-0

Advocate for the Petitioner : MR N AHMED

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

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

ORDER

18.07.2023

[A.M.Bujor Barua, J.]

Heard Mr. N. Ahmed, learned counsel for the petitioner. Also heard Mr. A. Verma, learned counsel for the Home Department; Mr. L. Devi, learned counsel for the NRC and UoI; Ms. U. Das, learned counsel for the DC; and Mr. A.I. Ali, learned counsel for the ECI.

2. The petitioner Akbar Ali had been referred to the Foreigners' Tribunal, No. 1, at Barpeta district for rendering an opinion as to whether he is a foreigner under the Foreigners' Act, 1946 resulting in registration of F.T. Case No. 139/2017, wherein an opinion dated 04.12.2018 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the Voters' List of 1966 of village Garala Police Station Baghbar in the Barpeta district, which contains the name of Ofatan Nessa, wife of Hakim Uddin at serial no. 366 and Intaz Ali, son of Hakim Uddin at serial no. 367. The petitioner also relies upon

the Voters' List of 1970 of village Garala Police Station Baghbar in the Barpeta district, which contains the name of Ofatan Nessa, wife of Hakim at serial no. 404 and Intaz Ali, son of Hakim at serial no. 405. The petitioner further relies upon the Voters' List of 1977 of village Garala Police Station Baghbar in the Barpeta district, which contains the name of Ofatan Nessa, wife of Hakim at serial no. 564; Intaz Ali, son of Hakim at serial no. 565; and Akbar Ali, son of Hakim at serial no. 566. Accordingly it is claimed that the petitioner has discharged the burden under Section 9 of Foreigners' Act 1946, inasmuch as, his name Akbar Ali appears along with Ofatan Nessa and Intaz Ali in the Voters' List of 1977 of village Garal, whereas the name of Ofatan Nessa and Intaz Ali also appears in the Voters' List of 1966 and 1970.

4. Ms. A. Verma, learned counsel for the Home Department has raised an objection that before the Tribunal the petitioner filed written statement as well as the evidence as indicated above but thereafter discontinued further appearance in the Tribunal which resulted in the opinion dated 04.12.2018. Accordingly, it is submitted that the matter may be remanded back to the Tribunal to be continued further from the stage of argument.

5. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, No. 1 at Barpeta district to take fresh a decision on the claim of the petitioner that he is not a foreigner by taking note of the Voters' List of 1966, 1970 and 1977 of village Garala. But for the conduct of the petitioner in not appearing before the Tribunal any further after the initial stage the petitioner to pay a cost of Rs. 5,000/- to be deposited before the Bar Association Welfare Fund of the Gauhati High Court and the petitioner to appear before the Tribunal on 11.08.2023 after showing proof of the payment of the cost. The Home Department may make their own verification and submit report before the

Tribunal as well as to cross-examine the witnesses of the petitioner. Upon doing the needful the Tribunal may pass a reasoned order.

6. The petitioner to appear before the Tribunal on 11.08.2023.

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

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant