

GAHC010032722018



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

Case No. : WP(C)/1039/2018

RAHIJ UDDIN @ RAIJ UDDIN
VILLAGE- KANGKAIRPAR, PO- MARKULA, PS BAGUAN, DIST. GOALPARA
(ASSAM), PIN-783120

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE DEPUTY COMMISSIONER
GOALPARA
DIST. GOALPARA
ASSAM
783101

4:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
ASSAM
783101

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)
BHANGAGARH
GUWAHATI-78103

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

28.04.2023

(AM Bujor Barua, J)

Heard Ms. H. Ahmed, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. A.I. Ali, learned counsel for the authorities under the Election Commission of India, Mr. G. Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B), Goalpara and Ms. U. Das, learned Government Advocate for the Deputy Commissioner, Goalpara.

2. The petitioner, Rahij Uddin @ Raij Uddin had been referred to the Foreigners Tribunal No.4, Goalpara for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in registration of F.T. Case No.FT(G-4) 571/16. The learned Tribunal rendered an opinion dated 30.12.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding, the petitioner relies on the voters list of 1966 of village Kongai Pubpara, P.S. Lakhipur in Goalpra District which contains the name of Subahana, son of Sot Makdam at Serial No.3 as well as the voters list of 1970 of village Kongai Pubpara which contains the name of Subahan Sk., son

of Sot Makdam at Serial No.3. The petitioner thereupon relies on the voters list of 1989 of village Pub Kongaipara which contains the name of Abdus Subahan, son of Mukadram at Serial No.544, Naser Ali, son of Abdus Subhan at Serial No.546. Thereafter, the petitioner relies on the voters list of 2005 also of village Pub Kongaipara which contains the name of Naser Ali, son of Subahan Ali at Serial No.381 and that of Rahij Uddin, son of Naser Ali at Serial No.383. The petitioner claims to be Rahij Uddin of the voters list of 2005 and by claiming Naser Ali to be his father seeks to prove his citizenship through Subahan and Subahan Sk. of the voters lists of 1966 and 1970 of village Kongai Pubpara of Goalpara District and thereby discharge the burden under Section 9 of the Foreigners Act, 1946.

5. If Subahan referred in the voters list of 1966, Subahan Sk. of the voters list of 1970 and Abdus Subahan of the voters list of 1989 are one and same person and Naser Ali of the voters list of 1989 and Naser Ali of the voters list of 2005 are one and the same person and the name of the petitioner appeared along with Naser Ali, the petitioner may have discharged the burden under Section 9 of the Foreigners Act, 1946.

6. Under the circumstances, the matter is remanded back to the Tribunal to examine the voters lists of 1966, 1970, 1989 and 2005 of village Pub Kongaipara in Goalpara District and pass a reasoned order thereafter. As the voters lists placed before this Court are unauthenticated copies of the same, the petitioner to produce complete and authenticated voters lists of the aforesaid years before the Tribunal for its examination.

7. The respondents in the Home Department, Government of Assam through the Superintendent of Police (Border), Sivasagar also to make enquiry as to whether the names appearing in the voters lists are respectively the father and

grandfather of the petitioner as claimed and also whether the name Rahij Uddin referred in the voters list of 2005 of Pub Kongaipara in Goalpara District and the petitioner Rahij Uddin @ Raij Uddin are one and same person.

8. Upon undertaking the aforesaid exercise, a reasoned order be passed by the Tribunal.

9. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.12.2017 rendered in F.T. Case No. FT(G-4) 571/16 and if it goes against the petitioner, consequence as per law shall follow.

10. The petitioner shall appear before the Foreigners Tribunal No.4, Goalpara on 07.06.2023.

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

12. The writ petition is disposed of as indicated above.

13. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant