

GAHC010032772018



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

Case No. : WP(C)/1027/2018

MD. MOZI ALI
S/O- LT ISMAIL ALI, R/O- VILL- KASIMPUR, P.S. NALBARI, DIST- NALBARI,
ASSAM

VERSUS

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

2:THE ELECTION COMMISSION
NEW DELHI

3:THE STATE OF ASSAM
REP. BY THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

4:THE ASSAM STATE COORDINATOR OF NRC
BHANGAGARH
GHY-5

5:THE DEPUTY COMMISSIONER
SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-785640

6:THE SUPERINTENDENT OF POLICE (B)
SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-78564

Advocate for the Petitioner : MR. S A AHMED

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 Mr. S.A. 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), Sivasagar and Ms. U. Das, learned Government Advocate for the Deputy Commissioner, Sivasagar.

2. The petitioner, Md. Mozi Ali had been referred to the Foreigners Tribunal, Jorhat 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 Case No. FT/SVR/75/15. The learned Tribunal rendered an opinion dated 12.09.2017 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 1965 of village Kasimpur, P.S. Nalbari in the then Kamrup District (now Nalbari District) which contains the name of Jabbar Ali, son of Kolom at Serial No.31 and that of

Sahatan Bibi, wife of Jabbar at Serial No.32 where both are shown to be residing in the same House No.76. The voters list of 1970 also contains the name of Jabbar Ali, son of Kolom at Serial No.91 and Sahatan Bibi, wife of Jabbar at Serial No.92 where both are shown to be residing at House No.76. Reliance was also placed on the voters list of 1971 of village Kasimpur which contains the name of Ismail, son of Jabbar at Serial No.777 and that of Megum Nessa, wife of Ismail, to be read as Begum Nessa at Serial No.778 and both are shown to be residing in same House No.76. It has been also taken note that Jabbar Ali and Sahatan Bibi are also residing in the House No.76, meaning thereby that Jabbar Ali, Sahatan Bibi, Ismail, Begum Nessa are all residing at House No.76. Petitioner thereupon relies on the voters list of 1997 of village Kasimpur which contains the name of Mozi Ali, son of Ismail at Serial No.44 and that of Asiya Khatun, wife of Mozi at Serial No.45.

5. Petitioner claims that Mozi Ali referred in the voters list of 1997 of village Kasimpur is the petitioner himself and as citizenship of Ismail could be proved through the voters list of 1971 as well as the earlier voters lists of 1966 and 1970 in respect of Jabbar Ali, therefore, the petitioner had discharged the burden under Section 9 of the Foreigners Act, 1946 that he is an Indian citizen.

6. Without expressing any view of such claims, the matter is remanded back to the Tribunal to examine the voters lists of 1966, 1970, 1971 and 1997 of village Kasimpur and arrive at a conclusion whether the petitioner Mozi Ali is a citizen of India. In doing so, the petitioner to produce the complete voters lists of 1966, 1970, 1971, 1985 as well as 1997 of village Kasimpur which may contain the names of the petitioner, his father and grandfather etc.

7. The respondents in the Home Department, Government of Assam also to make the verification through the Superintendent of Police (Border), Sivasagar

as to whether Ismail, father of Mozi Alias contained in the voters list of 1997 and Ismail referred in the voters list of 1971 are one and the same person.

8. The Superintendent of Police (Border), Sivasagar to make the verification as to Mozi Ali referred in the voters list of 1997 and the petitioner Mozi Ali are one and same person

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

10. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 12.09.2017 rendered in Case No.FT/SVR/75/15 and if it goes against the petitioner, consequence as per law shall follow.

11. The petitioner shall appear before the Foreigners Tribunal, Jorhat on 07.06.2023. The petitioner be allowed to produce any further material, if so advised.

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

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

14. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant