

GAHC010034772022



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

Case No. : WP(C)/1468/2022

TAIZUDDIN
S/O. LT. BISHA MIAY @ BISHU MIYA, VILL. SALEKURA, P.S. AND DIST.
BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECY. TO THE HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE DEPUTY COMMISSIONER

KAMRUP (M)
P.O. AND DIST. KAMRUP (M)
ASSAM
PIN-781001.

4:THE SUPDT. OF POLICE (B)

KAMRUP (M)
P.O. AND DIST. KAMRUP (M)
ASSAM
PIN-781001.

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-01.

6:THE STATE COORDINATOR NRC

ASSAM BHANGAGARH
GUWAHATI-05

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 NELSON SAILO

ORDER

Date : 05.06.2023

(A.M. Bujor Barua, J)

Heard Mr. N. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Kamrup(M) and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Taizuddin was referred to the Foreigners' Tribunal No. 4, Kamrup(M) for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. FT(K(M)-4) 1181/17 was registered. The Tribunal had rendered its opinion dated 30.04.2019 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1970 of village Salekura, Mouza Jania in the Kamrup district which contains the name of Kalimuddin son of Chandu at Sl. No. 630 and that of Saheba Khatun wife of Kalimuddin at Sl. No. 631. It is claimed that Kalimuddin is the grandfather and Saheba Khatun is the grandmother of the petitioner. The petitioner also relies upon the voters' list of 1989 of village Salekura, Mouza Jania in the Barpeta district which contains the names of Bisa Miah son of Kalim at Sl. No. 219 and Jahura Khatun wife of Bisa Ali at Sl. No. 220. It is claimed that Bisa Miah is the father and Jahura Khatun is the mother of the petitioner. But it is noticed that no voters' list is produced which may contain the name of Kalimuddin and Bisa Miah together so as to conclusively establish that Bisa Miah is the son of Kalimuddin of the voters' list of 1970 of village Salekura. The petitioner further relies upon the voters' list of 2005 of village Salekura in the Barpeta district which contain the names of Bishu Miya son of Kalimuddin at Sl. No. 265, Jahura Khatun wife of Bishu Miya at Sl. No. 266 and Taijuddin son of Bishu Miya at Sl. No. 267 and all of them are shown to be residing in the same house No. 313. As the names of Bishu Miya and Taijuddin appear together in the voters' list of 2005 of village Salekura and that of Bishu Miya of the voters' list of 1989 along with Kalimuddin in the voters' list of 1970 of the same village, it is claimed that the burden under Section 9 of the Foreigners Act, 1946 has been discharged by the petitioner. Further reference is made to a Jamabandi of a plot of land at village Salakura which contains the information that the land had been mutated in place of Kalimuddin son of Chan Bepari in favour of Bisha Miya son of Kalimudddin and thereafter, again in the name of, amongst others, Taizuddin son of Bisha Miya in place of Bisha Miya. For the purpose of mutation order as indicated above, reference is made to the order of the Circle Officer dated

27.06.2019 by which the land, amongst others, had also been mutated in favour of Taizuddin in place of Bisha Miya.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 4, Kamrup(M) to examine the aforesaid voters' lists of 1970, 1989 and 2005 of village Salekura as well as the Jamabandi which has been referred. The State respondents in the Home Department through the Superintendent of Police(B), Kamrup(M) may also make their own verification as to whether the petitioner Taizuddin and Taizuddin at Sl. No. 38 of the Jamabandi as well as Taizuddin at Sl. No. 267 of the voters' list of 2005 of village Salekura are one and the same person and thereafter submit a report before the Tribunal.

5. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.04.2019 in Case No. FT(K(M)-4) 1181/17 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant