

GAHC010042082017



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

Case No. : WP(C)/5992/2017

ARFAN ALI
S/O. LT. ALA BOX, R/O VILL. KOREYA PATHER, P.S. JOGIGHOPA, DIST.
BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, DEPTT. OF HOME
AFFAIRS, NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
BONGAIGAON
P.O. and DIST. BONGAIGAON
ASSAM
PIN.-783380.

4:THE SUPERINTENDENT OF POLICE B
BONGAIGAON

P.O. AND DISTRICT- BONGAIGAON
ASSAM
PIN-783380.

5:THE OFFICER-IN-CHARGE
JOGIGHOPA POLICE STATION

DIST. BONGAIGAON
ASSAM
PIN-783382

Advocate for the Petitioner : MS. M BARMAN

Advocate for the Respondent : GA, ASSAM

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

ORDER

18.05.2023

(AM Bujor Barua, J)

Heard Mr. M Islam, 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 and Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Bongaigaon as well as the Officer-in-Charge, Jogighopa Police Station and Mr. PK Medhi, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioner, namely, Arfan Ali was referred to the Foreigners Tribunal Bongaigaon No.2 Abhayapuri 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 the registration of Case No.BNGN/FT/3620/08 corresponding to Ref: BNGN FT Case No.191/08 wherein an opinion dated 03.08.2017 was rendered declaring the petitioner to be a person who had entered the State of Assam from the

specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Chatala Non K P.S. Baghbor which contains the name of Ala Box son of Asrab Ali at Sl.No.52 and that of Ujala Khatun wife of Ala Box at Sl.No.53 where both of them are shown to be residing in the same House No.21. The petitioner claims that Ala Box of the 1966 voters list of village Chatala Non K is his father. To substantiate the same, the petitioner relies upon the deposition of DW-2 Sorman Ali Talukdar son of Late Abdul Karim of village Chatala who is also the Gaonburah of the concerned village as on 26.04.2015. DW-2 Sorman Ali Talukdar in his deposition stated that the name of the father of the petitioner is Ala Box and the house of the petitioner is at village Chatala Non K and further that he personally knows the opposite party and also that the petitioner Arfan Ali was born in the Chatala village. As DW-2 had rendered evidence on his claim that he personally knows the petitioner, there is also a requirement for the respondents in the Home Department of the Government of Assam to cross examine the DW-2 to extract the veracity of the statement that he personally knows the petitioner so as to make his deposition on the basis of personal knowledge.

5. For the purpose, the matter stands remanded back to the Tribunal so as to enable the Tribunal to cross examine the DW-2 Sorman Ali Talukdar, particularly on the statement that he personally knows the petitioner. In doing so, the DW-2

to also state the circumstances under which he personally happens to know the petitioner.

6. The respondents in the Home Department may also make their own verification on the aforesaid aspect and submit a report before the Tribunal, if so advised.

7. Accordingly, the petitioner shall appear before the Tribunal on 30.06.2023.

8. The petitioner may also produce any further material/document to establish his case, if so advised.

9. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 03.08.2017 of the Foreigners Tribunal Bongaigaon No.2 Abhayapuri in Case No.BNGN/FT/3620/08 corresponding to Ref: BNGN FT Case No.191/08 and if it is against the petitioner, consequential action under the law shall follow.

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

11. Writ petition stands disposed of in the above terms.

12. Send back the LCR.

13. A copy of this order be furnished to Ms. A Verma, learned counsel for the Home Department Government of Assam for doing the needful.

JUDGE

JUDGE

Comparing Assistant