

GAHC010046252023



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

Case No. : WP(C)/1380/2023

ALI AKBOR @ ALI AKBOR MUNCHI
S/O- LATE MOHAMMAD ALI, VILL. SALABILA PT-2, P.S. MANIKPUR, DIST.
BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, HOME
DEPARTMENT, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOK ROAD
NEW DELHI-110001.

4:THE STATE COORDINATOR

NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI-05.

5:THE DEPUTY COMMISSIONER
BONGAIGAON
DIST. BONGAIGAON

ASSAM
PIN- 783380.

6:THE SUPERINTENDENT OF POLICE (BORDER)
BONGAIGAON
DIST. BONGAIGAON
ASSAM
PIN- 783380.

7:THE OFFICER-IN-CHARGE
MANIKPUR POLICE STATION
DIST. BONGAIGAON
ASSAM
PIN- 783390

Advocate for the Petitioner : MR. M I HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 14.08.2023

(A.M. Bujor Barua, J)

Heard Mr. M. I. Hussain, learned counsel for the petitioner. Also heard Ms. L. Devi, learned Central Government Counsel as well as Standing Counsel, NRC, for the respondent Nos. 1 & 4; Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal, for respondent Nos. 2, 6 & 7; Mr. H. K. Hazarika, learned Government Advocate, Assam, for respondent No. 5; and Mr. AI Ali, learned Standing Counsel, Election Commission of India, for respondent No. 3.

2. The petitioner, namely, Ali Akbor @ Ali Akbor Munchi, has been referred to the Foreigners' Tribunal No. 1, Bongaigaon, for rendering an opinion as to whether he is a foreigner under the Foreigners' Act, 1946, resulting in

registration of case No. BNGN/FT/900/09. The Tribunal rendered an opinion dated 21.12.2022 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 Dewdhuturi, Police Station Lakhipur in the present Goalpara District, which contains the names of Aymona Khatun wife of Lt. Mahammad Ali at Sl. No. 80 and Abdul Khaleque son of Mahammad Ali at Sl. No.83, where the age of Aymona Khatun is shown as 50 years and the age of Abdul Khaleque is shown as 30 years. The Voters List of 1970 of Village Dewdhuturi contains the names of Aymona Khatun wife of Mahammad Ali at Sl. No. 86 and A. Khaleque son of Mahammad Ali at Sl. No. 89, where their respective ages are shown as 54 years and 34 years. The Voters List of 1970 also contains the name of Asia Khatun wife of A. Khaleque at Sl. No. 88, whose age is shown to be 28 years. The Voters List of 1979 of Village Dewdhuturi contains the names of Amena Khatun Bewa wife of Late Ahammadali at Sl. No. 193, showing her age to be 40 years, Asia Khatun wife of A. Khaleque at Sl. No. 194, showing her age to be 34 years and that of A. Khaleque, son of Lt. Mohammad Ali, at Sl. No. 196, showing his age to be 40 years and that of Ali Akbor son of Lt. Mohammad Ali, showing his age to be 36 years. It is claimed that Ali Akbor of 1979 Voters List of Village Dewdhuturi is the writ petitioner himself.

4. To verify the aforesaid information, we required the Election Commission to produce the complete Voters List of Village Dewdhuturi of the years 1966, 1970 & 1979. The information contained in the 3 (three) Voters List are consistent with each other except in the Voters List of 1979, the mother is shown as Amena Khatun Bewa wife of Lt. Ahmamadali, whose age is shown to be 40 years.

5. Mr. AI Ali, learned Standing Counsel for the respondent Election Commission of India, candidly states that the age depicted in the Voters List may not be accurate at all times and it was perhaps an inadvertent mistake that the age of Amena Khatun Bewa is shown as 40 years in the year 1979, whereas it was 50 years in 1966 and 54 in 1970. But, at the same time, the respective names, father's name and the age of the other members of the family in the 3 (three) Voters List of 1966, 1970 & 1979 appears to be consistent with each other. Further, the Voters List of 1979 also shows that Amena Khatun Bewa resides in the same House No. 67 along with Abdul Khaleque son of Mohammad Ali, Asia Khatun wife of A. Khaleque and Ali Akbor son of Mohammad Ali. In view of the consistency in the information contained in the Voters List, the discrepancy in the age shown against Amena Khatun Bewa in the Voters List of 1979 can be ignored.

6. Accordingly the matter is remanded back to the Tribunal to examine the aforesaid 3 (three) Voters List. The respondents in the Home Department to make their verification and submit the report before the Tribunal as to whether Ali Akbor of the 1975 & 1979 Voters List and the writ petitioner- Ali Akbor @ Ali Akbor Munchi are the one and the same person.

7. Upon doing the needful, the Tribunal to pass a reasoned order. The petitioner to appear before the Tribunal on 18.09.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 21.12.2022, passed in case No. BNGN/FT/900/09 and if it is against him, consequences under the law may follow.

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

9. The writ petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant