

GAHC010046602018



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

Case No. : WP(C)/1410/2018

AKBAR ALI
S/O- LATE KASIM UDDIN @ KASIM ALI, VILL- BARJANA PT- III, P.S-
ABHAYAPURI, DIST- BONGAIGAON, ASSAM, PIN- 783382

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

3:THE DEPUTY COMMISSIONER
BONGAIGAON
DIST- BONGAIGAON
ASSAM
PIN- 783380

4:THE SUPERINTENDENT OF POLICE(B)
BONGAIGAON
ASSAM
PIN- 783380

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

6:THE STATE COORDINATOR
NRC
BHANGAGARH

GHY- 3

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

ORDER

29.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. A. Matin, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.5 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Akbar Ali had been referred to the Foreigners' Tribunal, Bongaigaon No.2, Abhayapuri, for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of Case No.BNGN/FT/586/2009. The Tribunal rendered an opinion dated 05.01.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, although the petitioner had produced certain voters lists of 1966 and 1970 of village Barjana Part-III, which contains the name of Kasim Ali S/o Moij M. at Sl.Nos.126 and 136 respectively and that of Kajli Khatun W/o Kasim at Sl.Nos.127 and 137, respectively and thereafter the voters list of

1997 of village Barjana Part-III containing the name of Akbar Ali S/o Kasim Uddin at Sl.No.845, whereby the petitioner Akbar Ali claims that he had discharged the burden under Section 9 of the Foreigners Act, 1946. But the Tribunal in its opinion dated 05.01.2018 deemed it appropriate to reject the same by merely stating that the evidence and documents submitted by the petitioner in support of his version are found to be not sufficient and trustworthy to prove that he is a citizen. Even the statement of the petitioner that his parents died in the year 1985 was disbelieved by the Tribunal by saying that he has failed to produce any documentary evidence. But no reason is forthcoming as to why the burden that is claimed to have been discharged through the voters lists of 1966 and 1970 of village Barjana Part-III and that of voters list of 1997 of village Barjana Part-III may indicate that the petitioner had discharged the burden under Section 9 of the Foreigners Act, 1946.

4. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966 and 1970 of village Barjana Part-III as well as the voters list of 1997 of village Barjana Part-III and arrive at the conclusion that whether Kasim Uddin being father of Akbar Ali in the voters list of 1997 and Kasim Ali of the voters of lists of 1966 and 1970 of the same village are one and the same person and thereupon pass a reasoned order. The respondents in the Home Department may make their own verification as to whether whether Kasim Uddin being father of Akbar Ali in the voters list of 1997 and Kasim Ali of the voters of lists of 1966 and 1970 of the same village are one and the same person and submit a report before the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 05.01.2018 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 01.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. Send back the LCR immediately.

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

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant