

GAHC010047482019



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

Case No. : WP(C)/1572/2019

ABDUL GAFUR @ A. GAFUR @ MD. GAFUR ALI
S/O- LT YAKUB ALI@ EKUB ALI, PRESENT R/O- PAUL PATTY, P.S.
SIMALUGURI, DIST- SIVSAGAR, ASSAM, PERMANENT R/O- VILL- PAUL
PATTY, P.S. SIMALUGURI, DIST- SIVASAGAR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

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

3:THE DY. COMMISSIONER
SIVASAGAR P.O. AND DIST- SIVASAGAR
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
SIVASAGAR P.O. AND DIST- SIVASAGAR
ASSAM

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI

6:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH GHY-

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE NELSON SAILO**

O R D E R

08.06.2023

(A.M. Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Sivasagar.

2. The petitioner Abdul Gafur @ A. Gafur @ Md. Gafur Ali had been referred to the Foreigners Tribunal, Jorhat 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 resulting in registration of Case No. FT/SVR/426/2008, wherein an opinion dated 25.09.2017 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1965 of village Tatikata Pathar, which contains the name of Akub ali son of Sudan at serial No. 94 and that of Jarina Khatun wife of Akub Ali at serial No. 99, where both of them are shown to be residing in the same house No. 24. It is claimed that Akub Ali is the father and Jarina Khatun is the mother of the petitioner. The voters list of 1970 of village Tatikata Pathar also contains the name of Akub Ali. Reliance is also placed on the voters list of 1985 of village Tatikata Pathar, which contains the name of Abdul Gafur son of Yakub at serial No. 166. It is claimed that Abdul Gafur of the 1985 voters list is the petitioner himself. Reliance is

placed on a copy of Jamabandi of a plot of land at village Tatikata Pathar, wherein at serial No. 3, the name of Yakub Ali son of Sudan had been deleted and replaced at serial No. 11 by the name of, amongst others, Abdul Gafur son of Yakub Ali. The mutation in favour of Abdul Gafur had been incorporated pursuant to an order of the Circle Officer dated 22.01.2007, by which the name of Abdul Gafur was mutated in place of Yakub Ali.

4. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1965, 1970 and 1985 of village Tatikata Pathar as well as the Jamabandi of village Tatikata Pathar. The respondents in the Home Department may also make their own verification as to whether Abdul Gafur son of Yakub of the voters list of 1985 and Abdul Gafur of the Jamabandi are one and the same person and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 25.09.2017 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioner shall appear before the concerned Foreigners Tribunal on 13.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.

8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant