

GAHC010048732023



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

Case No. : WP(C)/1343/2023

RAJAB ALI
S/O MOHAMMED HASSEN ALI, R/O VILL-SONARIBALI, P.S.-SAMAGURI,
DIST-NAGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF POLITICAL AND HOME AFFAIRS, NEW DELHI

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN BHABAN
ASHOKA ROAD
NEW DELHI-110001

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

4:THE CHIEF ELECTION OFFICER
ASSAM
HOUSEFED COMPLEX
BELTOLA ROAD
GUWAHATI-781006

5:THE ELECTORAL REGISTRATION OFFICER
KALIABOR SUB-DIVISION
DIST-NAGAON
ASSAM

6:THE DEPUTY COMMISSIONER
-CUM-DISTRICT ELECTION OFFICER-CUM-ELECTORAL REGISTRATION
OFFICER
NAGAON
P.O. AND DIST-NAGAON
ASSAM

7:THE SUPERINTENDENT OF POLICE (BORDER)
NAGAON
P.O. AND DIST-NAGAON
ASSA

Advocate for the Petitioner : MS. G BORAH

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

BEFORE

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
HON'BLE MR. JUSTICE BUDI HABUNG

13.09.2023

O R D E R

(Lanusungkum Jamir, J)

Heard Ms. G. Borah, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC for respondent Nos.1; Mr. J. Payeng, learned Standing Counsel, FT for respondent Nos.3 and 7; Mr. T. Pegu, learned Standing Counsel, ECI for respondent Nos.2, 4 and 5 and Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for respondent No.6.

2. On a reference being made by the Superintendent of Police (B), Nagaon under the Foreigners Act, 1946 expressing doubt about the nationality of the petitioner/proceedee, FT Case No.145/2011 was registered in the Foreigners Tribunal (2nd), Nagaon. Thereafter, notice was issued to the petitioner and on receipt of the notice, the petitioner appeared before the Tribunal and contested the reference by filing written statement stating that he is not a foreigner as alleged.

3. The petitioner exhibited the voters list of 1965, sale deed of land in the year 1961, sale deed of land in the year 1972 and draft *chitha* of 1968 and 1969 as

Exhibits A, B, C and D.

4. The petitioner relies on the voters list of 1965, which was exhibited as Ext. A to show that the name of his grandfather, namely, Ali Mia, appeared at Sl. No.215 of the said list. The petitioner also relies upon the sale deed of a plot of land, which was purchased by his father, namely, Hasen Ali, son of Ali Miya from Md. Fate Ali, son of Folim Miya on 13.03.1961. Further reliance is placed on the sale deed dated 15.02.1972 wherein his father, namely, Hasen Ali, Son of Ali Miya purchased a plot of land from Fate Ali, Abdul Ali, Son of Folim Miya of village Sonaribali, Mouza Rangagarha, PS. Samaguri, Jakhlabandha, district Nagaon.

5. The petitioner also relies upon the draft *chitha* for the year 1968/1969 wherein at Sl No.2 the name of the father of the petitioner, namely, Hasen Ali, is recorded.

6. It is the case of the petitioner that in the written statement before the Tribunal, the petitioner also placed reliance on the voters list of 1989 where the name of his father, Hasen Ali, appears at Sl No. 70 and the name of the petitioner appears at Sl No.73. The petitioner has also placed reliance on the voters list of 1979 wherein the name of his grandfather, Ali Miya, appears.

7. The petitioner has made a statement in the written statement that he has submitted the voters lists of 1979 and 1989 to his engaged counsel during the proceedings of FT Case No.145/2011. However, the counsel for the petitioner could not exhibit the voters list of 1989 before the Tribunal, but the voters list of 1979 was exhibited as Ext. E.

8. A perusal of the opinion/order dated 04.05.2022 indicates that the voters list of 1979, which was exhibited as Ext. E was not found in the case records for perusal of the Tribunal.

9. Considering that the voters list of 1979 was exhibited before the Tribunal as Ext. E, however, which was not found on record, and that the counsel for the petitioner failed to exhibit the voters list of 1989 as an exhibit despite being mentioned in the written statement, we are of the opinion that a chance should be given to the petitioner to prove his linkage with his father, Hasen Ali, and his grandfather, Ali Miya.

10. In that view of the matter, the matter is remanded to the Foreigners Tribunal (2nd), Nagaon to permit the petitioner/proceedee to exhibit the certified true copy of the voters lists of 1979 and 1989 relied upon by the petitioner. Thereafter, the Tribunal shall consider the voters lists of 1979 and 1989 and proceed in accordance with law by passing appropriate order.

11. Accordingly, the opinion dated 04.05.2022 passed by the Foreigners Tribunal (2nd), Nagaon in FT Case No.145/2011 is set aside and quashed.

12. The petitioner shall appear before the Foreigners Tribunal (2nd), Nagaon on 03.10.2023 and the Tribunal will proceed afresh to decide the claim of the petitioner that the petitioner is not a foreigner but a citizen of India in accordance with law.

13. The writ petition is, accordingly, disposed of.

JUDGE

JUDGE

Comparing Assistant