

GAHC010051272019



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

Case No. : WP(C)/1763/2019

NUR MOHAMMAD @ NOOR MAHAMAD ALI
S/O- JAMIR ALI, VILLAGE- KEDAR PART-II, P.O. DIMAKURI, P.S.
GOLAKGANJ, SUB-DIVISION-DHUBRI, DIST.- DHUBRI, ASSAM, PIN-783334.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI, 110001.

2:THE ELECTION COMMISSIONER
ASSAM
DISPUR
GUWAHATI-6.

3:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

4:THE NODAL OFFICER

NRC
ASSAM
PIN- 781005.

5:THE DEPUTY COMMISSIONER
KAMRUP(M)
DIST.- KAMRUP(M)
ASSAM
PIN- 781001.

6:THE COMMISSIONER OF POLICE (B)
KAMRUP(M)
GUWAHATI
ASSAM
PIN- 781001.

7:THE OFFICER-IN-CHARGE
BASISTHA POLICE STATION
GUWAHATI
DIST.- KAMRUP(M)
ASSAM. PIN-781038

Advocate for the Petitioner : MR. J AHMED

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

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

ORDER

15.05.2023

(AM Bujor Barua, J)

Heard Mr. J Ahmed, 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, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sharma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Commissioner of Police (B) Kamrup (Metro) as well as the Officer-in-Charge of Basistha Police Station and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Kamrup(M).

2. The petitioner, namely, Nur Mohammad @ Noor Mahamad Ali was referred to the Foreigners Tribunal Kamrup(M) 2nd Guwahati 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 F.T. Case No.509/2017 wherein an opinion dated 29.10.2018 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. The petitioner relies upon the voters list 1958 of village Berbhangi Mouza Golakganj which contains the name of Futu Sk, son of Somir at Sl.No.139 and also the voters list of 1966 of village Berbhangi Pt.III which contains the name of Futu Sk son of Somir at Sl.No.06 and that of Moyjan Bibi wife of Futu at Sl.No.07. The petitioner thereafter relies upon the voters list of 1977 of village Kedar Pt.II containing the name of Futu Sk, son of Somir Sk at Sl.No.222 and that of Mayjan Bibi wife of Futu at Sl.No.223 along with Jamir Ali son of Futu at Sl. No.226. It is claimed that Jamir Ali of 1977 voters list is the father of the petitioner. As the voter list of 1958 and 1966 pertains to village Berbhangi Pt. III, whereas the voters list of 1977 is in respect of village Kedar Pt. II, a question had arisen as to whether the family of Futu Sk of 1958 and 1966 voters list of village Berhangi has subsequently shifted to village Kedar Pt.II.

5. In order to ascertain the claim of shifting, we required the Election Commission of India to produce the downward and upward voters list of village

Berbhangi Part III and village Kedar Part II so as to examine as to whether the names of the family of Futu Sk were discontinued in the voters list of Berbhangi after shifting and also as to whether the names of the family members of Futu Sk did appear in the voters list prior to 1977 in respect of village Kedar Pt.II.

6. A perusal of the complete voters list of the aforesaid two villages make it discernible that although the names of the family members appeared in the voters list of Berbhangi upto the year 1966, but thereafter it discontinued. Whereas, on the other hand, it was included in the voters list of village Kedar Pt.II after 1977 and onwards and further that the names of the family members did not appear in the voters list of Kedar Pt.II prior to 1977.

7. The aforesaid information *prima facie* is an indication of the claim of the petitioner that the family members of Futu Sk had shifted from village Berbhangi Pt III to village Kedar Pt.II.

8. Reference is also made to the voters list of Kedar Pt.II of the year 1985 of village Kedar Pt. II which contains the names of Jamir Ali son of Futu Sk at Sl.No.552 and that of Nurjahan Bibi wife of Jamir Ali at Sl.No.553 as well as the voters list of 2005 of village Kedar Pt. II which contains the name of Jamir Ali son of Futu Sk at Sl.No.327 and that of Nur Jahan Bibi wife of Jamir Ali at Sl.No.328 along with Nur Mahammad, son of Jamir Ali at Sl.No.329. As the name of Nur Mahammad appears along with Jamir Ali in the voters list of 2005 of village Kedar Pt.II along with that of Nur Jahan Bibi wife of Jamir Ali and further that all the three are shown to be residing in the same House No.93, it

also may be a *prima facie* indication that Nur Mahammad being the son of Jamir Ali and Jamir Ali being the son of Futu Sk, had discharged the burden under Section 9 of the Foreigners Act 1946 to prove that the petitioner is a citizen of India.

9. In view of the above, the matter stands remanded back to the Tribunal to examine the voters list of 1958 to 1966 of village Berbhanggi Pt III as well as that of the voters list of 1977, 1985 and 2005 in respect of village Kedar Pt. II by taking note of the claim of shifting as indicated hereinabove.

10. It is stated that Jamir Ali son of Futu Sk had also rendered his evidence as DW-2 to prove that Nur Mahammad is his son. On being remanded back, the Tribunal to also examine the aforesaid fact.

11. Accordingly, the petitioner shall appear before the Tribunal on 28.06.2023.

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

13. It is pointed out that the exhibit Nos. of voters list in respect of 1977 and 1997 had been wrongly recorded. The Tribunal may take note of the same.

14. 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 29.10.2018 of the Foreigners Tribunal Kamrup(M) 2nd Guwahati in F.T. Case No.509/2017 and if it is against the petitioner, consequential action under the law shall follow.

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

16. The copies of the complete voters list produced by Mr. A Ali, learned counsel for the Election Commission of India be kept as part of the record and the petitioner upon appearance before the Tribunal may produce the complete voters list as indicated above.

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

18. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant