

GAHC010058892021



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

Case No. : WP(C)/2300/2021

AMINUR MOLLAH @ MD. AMINUR HUSSAIN MOLLAH
S/O LATE SAMSUL HOQUE MOLLAH, R/O VILL. DHUTURAMARI, P.O.
SRINAGAR, P.S. TAMARHAT, DIST. DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA AND 8 ORS
REPRESENTED BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA, NEW DELHI, PIN 110001

2:THE ELECTION COMMISSION OF INDIA

REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI 110001

3:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
HOME DEPTT.
DISPUR
GUWAHATI 781006

4:THE DEPUTY COMMISSIONER

KAMRUP (M)
P.O. PANBAZAR
DIST. KAMRUP (M)
ASSAM
PIN 781001

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP (M)
P.O. PANBAZAR
DIST. KAMRUP (M)
ASSAM
PIN 781001

6:THE DEPUTY COMMISSIONER

DHUBRI
P.O. AND DIST. DHUBRI
ASSAM
PIN 783301

7:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
P.O. AND DIST. DHUBRI
ASSAM
PIN 783301

8:THE STATE CO ORDINATOR OF NRC

ASSAM
P.O. AND P.S. BHANGAGARH
GUWAHATI 781005
DIST. KAMRUP (M)
ASSAM.

9:THE ELECTION OFFICER

GOSSAIGAON SUB DIVISION
P.O. GOSSAIGAON
DIST. KOKRAJHAR (BTAD)
ASSAM
PI

Advocate for the Petitioner : MR. S ISLAM

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

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

26.05.2023

[A.M.Bujor Barua, J.]

Heard Mr. S. Islam, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent nos. 1 and 8; Mr. A.I., Ali, learned counsel for the respondent No. 2; Mr. G. Sarma, learned counsel for the respondent nos. 3, 5, 7 and 9; and Ms. K. Phukan, learned counsel for the respondent nos. 4 and 6.

2. The petitioner Aminur Mollah @ Md. Aminur Hussain Mollah had been referred to the Foreigners' Tribunal, No. 2, Kamrup [M] at Guwahati 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 FT Case No. 319/2018, wherein an opinion dated 19.12.2019 had been rendered 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 171 Dhuturamari, P.S. Gossaigaon presently in the Kokrajhar district, which contains the name of Samsul Hoque Mollah, son of Alimuddin at serial no. 169 and that of Alimuddin, son of Ames Mohammad at serial no. 166. It is claimed that Samsul Hoque Mollah is the father of the petitioner to substantiate the same the petitioner relies upon the Voters' List of 1979 of village Dhuturamari which contains the name of Samsul Hoque Mollah, son of Alimuddin at serial no. 148 and that of Amena Bibi, wife of Samsul at serial no.

150 and both are shown to be residing in the same house no. 34. It is stated that Amena Bibi wife of Samsul Hoque Mollah is the mother of the petitioner and to substantiate the same the petitioner relies upon the Voters' List of 2005 of village Dhuturamari which contains the name of Amena Bewa, wife of Samsul at serial no. 761 and Aminur Mollah son of Samsul at serial no. 764. It is claimed that as the name of Amena Bewa wife of Samsul and Aminur Mollah appear together in the same Voters' List of village Dhuturamari, where the name of Amena Bibi appeared along with Samsul Hoque Mollah in the Voters' List of 1979 and the name of Samsul Hoque Mollah appeared in the Voters' List of 1970 of village Dhuturamari, the petitioner had discharged the burden under section 9 of the Foreigners' Act 1946.

4. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, No. 2, Kamrup [M] at Guwahati to examine the same. The petitioner may produce the complete Voters' List for the period 1966 to 2005 in respect of village Dhuturamari. The Home Department Government of Assam to make their own verification on the existence and acceptability of the aforesaid Voters' Lists and also that Aminur Mollah of Voters' List of 2005 of village Dhuturamari and the petitioner Aminur Mollah are one and the same person and to submit a report before the Tribunal .

5. Upon undertaking the exercise, the Tribunal may pass a reasoned order and if the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 19.12.2019 passed in FT Case No. 319/2018, and if against, consequence under the law is applicable to the petitioner.

6. The petitioner to appear before the Tribunal on 24.07.2023.

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

Writ petition stands disposed of in the above terms.
Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant