

GAHC010061662018



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

Case No. : WP(C)/1899/2018

CHAN MAMUD @ CHAN MIYA @ CHAN MISTRI
S/O. LT. JOSIMUDDIN @ LT. JOSIMUDDIN SK., VILL. BANGALJHAR, P.S.
BAGURAN, DIST. GOALPARA, ASSAM, PIN-783101

VERSUS

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

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
DEPARTMENT OF HOME
DISPUR
GUWAHATI-6.

3:THE SUPERINTENDENT OF POLICE (B)
GOALPARA.
P.O. AND DIST. GOALPARA
ASSAM PIN-783101

4:THE DEPUTY COMMISSIONER
GOALPARA
P.O. AND DIST. GOALPARA
ASSAM PIN-783101

5:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GUWAHATI-5.

6:THE ELECTION COMMISSION OF INDIA
NEW DELHI

Advocate for the Petitioner : MR Z HUSSAIN
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

08.08.2023

(A.M. Bujor Barua, J)

Heard Mr. M Hoque, 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, Mr. G Sarma, 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 Mr. P Sarma, learned counsel for the Deputy Commissioner, Goalpara.

2. The petitioner Chan Mamud @ Chan Miya @ Chan Mistri had been referred to the Foreigners Tribunal No. 4, Goalpara for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of Case No. FT(G-4) 256/2015, wherein an opinion dated 28.02.2018 was 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 Bangaljhar, police station-Lakhipur in the Goalpara district, which contains the name of Santobhan Nessa wife of Jasimuddin Sk at serial No. 338 and Jasimuddin Sk son of Ahadulla Sk at serial No. 340 and it is claimed that Santobhan Nessa is the mother and Jasimuddin Sk is the father of the petitioner. The name of Jasimuddin Sk also appears in the voters list of 1970 of village Bangaljhar. The petitioner also relies upon the voters list of 1979 of village

Bangaljhar, which contains the name of Jasimuddin at serial No. 257 and Santiban Nessa at serial No. 258. The voters list of 1989 of village Bangaljhar contains the name of Jasimuddin at serial No. 545 and Santibanu Nessa at serial No. 547.

4. Santobhan Nessa also deposed before the Tribunal as DW-2 stating that Chan Mamud is her son.

5. In view of the above, we remand the matter back to the Tribunal to examine all the voters list of village Bangaljhar from the years 1966 to 1989 and the evidence of DW-2. The respondents in the Home Department may make their verification and submit a report before the Tribunal and also cross-examine the DW-2, if so advised. After doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 28.02.2018 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 15.09.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant