

GAHC010061862023



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

Case No. : WP(C)/1707/2023

ABUL KALAM @ ABDUL KALAM
S/O- LATE JAHAR ALI @ JAHUR ALI @JOHAR ALI

PERMANENT R/O- VILLAGE ISWARJARI PART -I,P.S- JOGIGHOPA, DIST-
BONGAIGAON, ASSAM, PIN-783382

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS,
NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NEW DELHI-110001

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

4:THE DEPUTY COMMISSIONER
BONGAIGAON
PIN-783380

5:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
PIN-783380
ASSAM

6:THE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M

Advocate for the Petitioner : MR A W AMAN

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

BEFORE

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

O R D E R

21.07.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, 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. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioner Abul Kalam @ Abdul Kalam had been referred to the Foreigners Tribunal No. 2, Bongaigaon at Abhyapuri 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 BNGN/FT/Case No. 1457/2007, wherein an opinion dated 29.03.2017 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 1965 of

village Bhandara Part-I, which contains the name of Johar Ali son of Ahat Sheikh at serial No. 10. It is claimed that Johar Ali is the father of the petitioner. Subsequently, the petitioner had shifted to village Iswarjhari Part-I resulting in his name appearing in the voters list of village Iswarjhari. Before the Tribunal, the petitioner took the stand that he is the son of Johar Ali of the 1965 voters list of Bhandara Part-I. To substantiate that Abdul Kalam is the son of Johar Ali of the voters list of 1965 of village Bhandara Part-I, who had shifted to village Iswarjhari, reliance is placed on the evidence rendered by Abjal Hussain aged about 80 years of village Bhandara Part-I, who is also the father in law of the writ petitioner proceedee Abdul Kalam. Abjal Hussain had stated in the affidavit that the writ petitioner Abdul Kalam is his son in law and he has personal knowledge as well as special means of having the knowledge that the petitioner is the son of Johar Ali of the 1965 voters list of Bhandara Part-I.

4. If the statements made by Abjal Hussain in the affidavit filed before the Court is to be accepted as evidence, the petitioner may have discharged the burden under section 9 of the Foreigners Act, 1946 that he is not a foreigner.

5. In view of the above, we remand the matter back to the Tribunal to enable the petitioner to adduce the evidence of Abjal Hussain, son of Hajrat Ali aged about 80 years, resident of village Bhandara Part-I to establish that the petitioner Abdul Kalam is the son of Johar Ali of the 1965 voters list of village Bhandara Part-I. In doing so, the respondents in the Home Department may appropriately cross examine Abjal Hussain as may be advised and may also make their own verification and submit a report before the Tribunal. 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 29.03.2017 and if it goes against the petitioner,

consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 16.08.2023. 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