

GAHC010067482021



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

Case No. : WP(C)/2563/2021

ANISUR RAHMAN @ ANIDUR RAHMAN
S/O ALI HUSSAIN @ ANI HUSSAIN, R/O VILL. GUNAIBORI, P.S.
MOIRABARI, DIST. MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECY. TO THE GOVT.OF INDIA, MINISTRY OF
HOME AFFAIRS, SHASTRI BHAWAN, NEW DELHI 110001

2:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
HOME DEPTT.
DISPUR
GUWAHATI 6

3:THE DEPUTY COMMISSIONER

MORIGAON
PIN 782105

4:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
PIN782105

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI 110001

6:THE STATE COORDINATOR

NATIONAL REGISTRAR OF CITIZENS (NRC)
ASSAM
GUWAHATI 78100

Advocate for the Petitioner : MR H R A CHOUDHURY

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 07.06.2023
(A.M. Bujor Barua, J)

Heard Ms. H. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Morigaon and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the Election Commission of India.

2. The petitioner Anisur Rahman @ Anidur Rahman was referred to the Foreigners' Tribunal No. 5, Morigaon for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. F.T.(D) 884/2017 (new number) corresponding to F.T.(D) 137/2012 (old number) was registered. The Tribunal had rendered its opinion dated 30.01.2021 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Gunaibari Gaon, P.S. Laharighat in the Nagaon district which contains the name of Ali Hussen son of Sonabar at Sl. No. 199. The petitioner also relies upon the voters' list of 1970 of village Gunaibari Gaon, P.S. Laharighat in the Nagaon district which contains the name of Ali Hussen son of Sonabar at Sl. No. 191. It is claimed that Ali Hussen of the voters' lists of 1965 and 1970 of village Gunaibari Gaon is the father of the petitioner. The petitioner further relies upon the voters' list of 2010 of village Gunaibari, P.S. Laharighat in the Nagaon district which contains the name of Anisur Rahman son of Ali Hussen at Sl. No. 908. It is claimed that Anisur Rahman of the voters' list of 2010 of village Gunaibari is the petitioner himself and he being the son of Ali Hussen whose name appears in the voters' lists of 1965 and 1970 of village Gunaribari Gaon, the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

4. However, reliance is placed on the voters' list of 1993 of village Ural Kotapathar and Belguri which contains the name of Ali Hussen son of Sonabar at Sl. No. 718 and that of Anisor son of Ali at Sl. No. 720. As the voters' list of 1993 is of village Ural Kotapathar and Belguri whereas the voters' lists of 1965, 1970 and 2010 are of village Gunaribari Gaon, a question has arisen as to whether these voters' lists are of the same village.

5. Ms. H. Ahmed, learned counsel for the petitioner has explained before the Court that village Gunaibari and Ural Kotapathar and Belguri are in fact adjacent villages and it being so, the name of the villages in the voters' lists are at times used interchangeably.

6. We are not expressing any view on the said submission but remand the matter back to the Foreigners' Tribunal No. 5, Morigaon to arrive at a factual determination whether the villages Gunaibari and Ural Kotapathar and Belguri

being adjacent villages, the names are used interchangeably in the voters' lists of the three villages. For the purpose, the view of the Election Commission of India be also obtained by the Tribunal. The State respondents in the Home Department through the Superintendent of Police(B), Morigaon may also make their own verification, if so advised and thereafter submit a report before the Tribunal. If it transpires that it is in fact the voters' list of the same village although in 1993 the name of village Ural Kotapathar and Belguri may have been used, appropriate order may be passed by the Tribunal inasmuch as, otherwise the information contained in the voters' list as regards the petitioner and his father appears to be prima facie consistent.

7. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.01.2021 in Case No. F.T.(D) 884/2017 (new number) corresponding to F.T.(D) 137/2012 (old number) and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 13.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant