

GAHC010070412018



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

Case No. : WP(C)/2211/2018

ABDUL JABBAR AND 4 ORS.
S/O LT. HUSSAIN ALI
R/O VILL- SARUCHALA
P.O. OKARABARI, P.S. LAHORIGHAT
DIST. MORIGAON, ASSAM,
PIN - 782123.

2: MOHIZUL ISLAM
S/O MD. ABDUL JABBAR
R/O VILL- SARUCHALA
P.O. OKARABARI
P.S. LAHORIGHAT
DIST. MORIGAON
ASSAM

PIN - 782123.

3: FAZAR ALI
S/O ABDUL JABBAR
R/O VILL- SARUCHALA
P.O. OKARABARI
P.S. LAHORIGHAT
DIST. MORIGAON
ASSAM

PIN - 782123.

4: AIJUL HOQUE
S/O MD. ABDUL JABBAR
R/O VILL- SARUCHALA
P.O. OKARABARI
P.S. LAHORIGHAT
DIST. MORIGAON
ASSAM

PIN - 782123.

5: TAIJUDDIN
S/O ABDUL JABBAR
R/O VILL- SARUCHALA
P.O. OKARABARI
P.S. LAHORIGHAT
DIST. MORIGAON
ASSAM

PIN - 782123

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 STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME DEPARTMENT

DISPUR
GUWAHATI -6.

3:THE DEPUTY COMMISSIONER

MORIGAON
PIN - 782105.

4:THE ELECTION COMMISSION OF INDIA

NEW DELHI- 110001.

5:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS
ASSAM
GUWAHATI - 781005.

6:THE SUPERINTENDENT OF POLICE (B)

MORIGAON
DIST. MORIGAON.

7:THE OFFICER-IN-CHARGE

LAHORIGHAT POLICE STATION

DIST. MORIGAO

Advocate for the Petitioner : MR F U BARBHUIYA

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

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

ORDER

16.05.2023

(AM Bujor Barua, J)

Heard Mr. FU Borbhuiya, learned counsel for the petitioners. 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 as well as the Superintendent of Police (B) Morigaon as well as the Officer-in-Charge of Lahorighat Police Station, Morigaon and Mr. TR Gogoi, learned Government Advocate for the Deputy Commissioner, Morigaon.

2. The petitioner No.1, namely, Md. Abdul Jabbar was referred to the Foreigners Tribunal 5th Morigaon 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 Case No.F.T.319/2016 (New Number) corresponding to

F.T.1127/12 (Old Number) wherein an opinion dated 26.02.2018 was rendered declaring the petitioner No.1 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. In the writ proceeding, the petitioner No.1 relies upon the voters list of 1965 of village Boralimari (South Part) P.S. Ropohihat district Nagaon which contains the name of Hussain Ali son of Abdul Rahman at Sl.No.431 and that of Khatijan Bibi wife of Hussain at Sl.No.432 and both are shown to be residing in the same House No.100. The petitioner No.1 also refers to the voters list of 1993 of village Boralimari (South Part) P.S. Juria in the Nagaon district which contains the name of Khatiza wife of Hussain at Sl.No.384 and that of Jabbar son of Hussain at Sl.No.385 and both are shown to be residing in the same House No.804. It is claimed that Khatiza Bibi wife of Hussain Ali of the 1965 voters list of village Boralimari (South Part) is his mother and Jabbar son of Hussain of the 1993 voters list of village Boralimari (South Part) is the writ petitioner No.1/proceedee himself. If it can be established that the writ petitioner No.1/proceedee Md. Abdul Jabbar and Jabbar, son of Hussain of the 1993 voters list of village Boralimari (South Part) are one and the same person, perhaps the petitioner No.1 may have discharged the burden under Section 9 of the Foreigners Act 1946 to prove that he is a citizen of India. But, again it would depend on the answer to the question as to whether the writ petitioner No.1/proceedee Md. Abdul Jabbar and Jabbar, son of Hussain of the 1993 voters list of village Boralimari (South Part) are one and the same person.

5. For the purpose, the matter stands remanded back to the Tribunal for examining the voters list of 1965 of village Boralimari (South Part) P.S. Ropohihat district Nagaon and the voters list of 1993 of village Boralimari (South Part) and as well as any material that the petitioner No.1 may produce to prove that the writ petitioner No.1/proceedee Md. Abdul Jabbar and Jabbar, son of Hussain of the 1993 voters list of village Boralimari (South Part) are one and the same person.

6. The respondents in the Home Department may also make their own verification on the aforesaid question as to whether the writ petitioner No.1/proceedee Md. Abdul Jabbar and Jabbar, son of Hussain of the 1993 voters list of village Boralimari (South Part) are one and the same person and submit a report before the Tribunal, if so advised.

7. Accordingly, the petitioner No.1 shall appear before the Tribunal on 30.06.2023.

8. It is pointed out that the voters list of 2005 of village Puthimari P.S. Juria in the Nagaon district contains the name of Abdul Jabbar as son of Hussain Ali at Sl. No.1182. The Tribunal may also look into the aforesaid aspect.

9. 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 No.1, the same shall prevail over the opinion dated 26.02.2018 of the Foreigners Tribunal 5th Morigaon in Case No.F.T.319/2016

(New Number) corresponding to F.T.1127/12 (Old Number) and if it is against the petitioner No.1, consequential action under the law shall follow.

10. Till the reasoned order is passed, no coercive action be taken against the petitioner No.1.

11. In respect of the petitioners No.2, 3, 4 and 5 as they are admittedly the sons of the petitioner No.1 Md. Abdul Jabbar, the determination of their citizenship would also depend upon the citizenship as may be determined by the Tribunal in respect of the petitioner No.1.

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

13. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant