

GAHC010070902023



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

Case No. : WP(C)/2337/2023

HABIBAR RAHMAN
S/O- LATE SEKANDAR ALI, R/O- VILL.- NICHUKA, P.S. BARPETA ROAD,
DIST. BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW DELHI-110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005.

5:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN- 781301.

6:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN- 781301.

7:THE OFFICER-IN-CHARGE OF BARPETA ROAD POLICE STATION
P.O. BARPETA ROAD
DIST. BARPETA
ASSAM
PIN- 781315

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 23.06.2023
(A.M. Bujor Barua, J)

Heard Ms. H. Betala, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 6 and 7, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Habibar Rahman was referred to the Foreigners' Tribunal

No. 11, Barpeta for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946 and accordingly Case No. (Bpt/11th)F.T.1011/2016 was registered. The Tribunal had rendered its opinion dated 08.08.2022 by arriving at its conclusion that the petitioner is a foreigner within the meaning of foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Bhetemarir Tup, Mouza Kharija Bijni in the Kamrup district which contains the names of Sekendar Ali son of Amiruddin at Sl. No. 3 and Aimana Nessa wife of Sekendar at Sl. No. 5 and both are shown to be residing in the same house No. 1. It is claimed that Sekendar Ali is the father and Aimana Nessa is the mother of the petitioner. The petitioner also relies upon a Jamabandi of a plot of land at village Bhetemarir Tup which contains the information that the land had been mutated in favour of Habibar Rahman son of Amina Khatun Bewa who is the wife of Sekendar Ali.

4. As the information contained in the Jamabandi prima facie indicates that Habibar Rahman is the son of Sekendar Ali of village Bhetemarir Tup and the name of Sekendar Ali appears in the voters' list of 1965 of the same village, it is claimed that the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946 to prove that he is a citizen of India.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 11, Barpeta to examine the aforesaid voters' list of 1965 of village Bhetemarir Tup as well as the Jamabandi which has been relied upon. The petitioner to produce the complete voters' lists of the years between 1965 and 1997 of village Bhetemarir Tup for examination of the Tribunal.

6. Mr. G. Sarma, learned counsel for the respondents in the Home

Department objects by stating that there is also a shifting of the petitioner Habibar Rahman to another village namely Nichuka.

7. The State respondents in the Home Department through the Superintendent of Police(B), Barpeta may make their own verification as to whether Habibar Rahman of village Nichuka and Habibar Rahman whose name appears in the Jambandi in respect of a plot of land at village Bhetemarir Tup are one and the same person and thereafter submit a report before the Tribunal.

8. 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 08.08.2022 in Case No. (Bpt/11th)F.T.1011/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 28.07.2023. 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