

GAHC010071032023



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

Case No. : WP(C)/1882/2023

MD. MAGARUL HUSSAIN
W/O- ASKAR ALI,
R/O- VILLAGE DAKERGAON,
P.S- MANKACHAR ,
DIST- SOUTH SALMARA MANKACHAR , ASSAM,
PRESENTLY RESIDING AT AZARA, P.S- AZARA, DIST- KAMRUP (M), ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SASTRI BHAWAN, NEW DELHI- 110001.

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

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

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S ROAD.
BHANGAGARH

GUWAHATI-05
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
KAMRUP METRO
PIN-781001

6:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

7:THE DEPUTY COMMISSIONER (B)
GUWAHATI
KAMRUP METRO
ASSAM
PIN-781001

8:THE OFFICER IN CHARGE
AZARA POLICE STATION
KAMRUP METRO
ASSAM PIN-78101

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 22.05.2023
(AM Bujor Barua, J)

Heard Ms. H Betala, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 7 and 8 being the authorities under the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the

respondent no. 3 being the authorities under the Election Commission of India and Ms. U Das, learned counsel for the respondents no. 5 and 6 being the Deputy Commissioner, Kamrup(M) and Deputy Commissioner, South Salmara Mankachar.

2. The petitioner Magarul Hussain had been referred to the Foreigners' Tribunal No. 4, Kamrup (M) for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of F.T. Case No. FT (K(M)-4) 1215/2017. The Tribunal rendered an opinion dated 28.02.2023 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Jhagrar Char Part I containing the name Dasimuddin Sheikh, S/O Kajemuddin at Sl. No. 286 and that of Asimon Bibi, W/O Dasimuddin at Sl. No. 287 where it is claimed that Dasimuddin Sheikh is the grandfather and Asimon Bibi is the grandmother of the petitioner. The petitioner thereupon relies on the voters' list of 1977 of village Jhagrar Char Part I which contains the names of Dasimuddin Sheikh, S/O Kajimuddin at Sl. No. 833 and that of Askar Ali, S/O Dasim Uddin at Sl. No. 835 and that of Monjila Khatun, W/O Ajkar Ali at Sl. No. 836. It is claimed that Askar Ali is the father and Monjila Khatun is the grandmother of the petitioner. The petitioner thereupon relies on the voters' list of 1997 of village Kakripara Part II which contains the names of Askar Ali, S/O Dasim Uddin at Sl. No. 1273 and that of Monjila Begum, W/O Askar at Sl. No. 1274. Reliance is also placed on the voters' list of 2005 of village Kakripara Part II which contains the name of Askar Ali, S/O Dasam Uddin at Sl. No. 745, Monjilla Khatun, W/O Askar Ali at Sl. No. 746 and that of Magarul Hussain, S/O

Askar Ali at Sl. No. 748. Accordingly, 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. But it is noticed that the voters' lists of 1966 and 1977 are in respect of Jhagar Char Part I where in the voters' list of 1977 the name of Dasimuddin Sheikh and Askar Ali appear together but the voters' list of 2005 containing the name of Askar Ali and Magarul Husain together is of village Kakripara Part II.

6. It is stated that after 1977 Askar Ali had shifted from village Jhagar Char Part I to village Kakripara Part II. To establish that Askar Ali had shifted, reliance is placed on the evidence of DW6 namely Bhulu Miah, S/O Dachamuddin Sk of village Jhagar Char Part III who had deposed that Askar Ali had later on after 1977 had shifted to village Kakripara Part II and therefore, his name along with his wife Monjila Khatun appear in the voters' lists of 1997 and 2005 of village Kakripara Part II along with the petitioner Magarul Hussain who is the son of Askar Ali.

7. In view of the above the matter stands remanded back to the Tribunal to examine the voters' lists of 1966, 1977 of village Jhagar Char Part I and voters' lists of 1997 and 2005 of village Kakripara Part II as well as the evidence of DW6 who gives deposition regarding the shifting from Jhagar Char Part I to village Kakripara Part II. The respondents in the Home Department may make their own verification as to whether Askar Ali, S/O Dasim Uddin of the voters' list of 1977 of village Jhagar Char Part I and Askar Ali, S/O Dasam Uddin of the voters' list of 2005 of village Kakripara Part II are one and the same person.

8. The petitioner to appear before the Tribunal on 05.07.2023.

9. If the reasoned order is in favour of the petitioner, the same shall prevail

over the opinion dated 28.02.2023 passed in FT (K(M)-4) 1215/2017 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant