

GAHC010071602019

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

Case No. : WP(C)/2242/2019

NUR ISLAM @ NOOR @ NURUL ISLAM AND 4 ORS.
S/O- LATE ISAB @ISUB ALI, R/O- VILL- KHALPIA, BORIBAZAR, P.O AND
P.S- MIKIRBHETA, PIN- 782106, DIST- MORIGAON, ASSAM

2: MUSSTT. JAMILA KHATUN
W/O- MD. NUR @ NOOR @ NURUL ISLAM
D/O- LATE ALIMUDDIN SARKAR
R/O- VILL- KHALPIA
BORIBAZAR
P.O AND P.S- MIKIRBHETA
PIN- 782106
DIST- MORIGAON
ASSAM

3: MD. ABDUL MAHAJAN @ ABDUL MAZID
S/O- MD. NUR @ NOOR @ NURUL ISLAM
R/O- VILL- KHALPIA
BORIBAZAR
P.O AND P.S- MIKIRBHETA
PIN- 782106
DIST- MORIGAON
ASSAM

4: ABU KASHEM @ ABDUL KASHEM
S/O- MD. NUR @ NOOR @ NURUL ISLAM
R/O- VILL- KHALPIA
BORIBAZAR
P.O AND P.S- MIKIRBHETA
PIN- 782106
DIST- MORIGAON
ASSAM

5: SOFIA KHATUN
D/O- MD. NUR @ NOOR @ NURUL ISLAM
R/O- VILL- KHALPIA
BORIBAZAR
P.O AND P.S- MIKIRBHETA
PIN- 782106
DIST- MORIGAON

ASSA

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY SECRETARY TO THE GOVT OF INDIA, MIN OF HOME AFFAIRS,
NEW DELHI- 110001

2:THE CHIEF ELECTION COMMISSIONER OF INDIA
ASHOKA ROAD
NEW DELHI- 01

3:THE STATE OF ASSAM
REP. BY ITS SECRETARY
GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 06

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007

5:THE STATE COORDINATOR
NRC
ASSAM
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GUWAHATI- 781005

6:THE DEPUTY COMMISSIONER
MORIGAON
DIST MORIGAON
ASSAM
PIN- 782104

7:THE SUPERINTENDENT OF POLICE(B)
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 78210

Advocate for the Petitioner : MR. K LAHKAR

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

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

Date : 23-02-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. AM Hasan, learned counsel for the petitioner. 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, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Director General of Police, Assam, the Superintendent of Police (B) Morigaon and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Morigaon.

2. The petitioner, namely, Nur Islam @ Noor @ Nurul Islam, his wife, sons and daughter were referred to the Foreigners Tribunal No.3 Morigaon for rendering an opinion as to whether they are persons who had entered the State of Assam from the specified territory subsequent to 25.03.1971 resulting in the registration of F.T.Case No.107/2016.

3. By the order dated 21.12.2018 of the Foreigners Tribunal No.3 Morigaon in Case No.F.T.107/2016 an opinion was rendered that the petitioners are persons

who entered the State of Assam from the specified territory subsequent to 25.03.1971.

4. Being aggrieved this writ petition is instituted.

5. In this writ proceeding, the petitioners take a stand that the name of the petitioner Nur Islam @ Noor @ Nurul Islam appeared in the voters list of 1970 of village Kotohguri under Dhing Police Station. But subsequently, in the year 1971, Nur Islam @ Noor @ Nurul Islam with his entire family had shifted to village Khalpia under Mikirbheta Police Station in the Morigaon district.

6. A plea of shifting being taken by a proceedee is a difficult question to answer. Both possibilities remain, that it may be merely a stand taken to escape from being declared to be a foreigner and at the same time, on facts, there may have actually been a shifting from one village to another. In order to ascertain to an extent as to whether the stand taken for shifting from one village to another village is factually correct, we undertook an exercise to obtain the information from the Election Commission of India as to whether the name of the proceedee continued to exist in the village from which he claims to have shifted subsequent to the date of shifting and whether the name of the proceedee did appear in the voters list of the village to where he claims to have shifted prior to the date of shifting. It can be understood that if the name of the proceedee continues to exist in the voters list of the village from where he had shifted and the same name also appears in the voters list of the village where he had shifted even prior to such shifting, a view can be formed that the two

persons cannot be the one and the same person and they have to be different, which, in other words, the claim of shifting can be rejected on such premises.

7. In the instant case, the Election Commission of India has produced the complete voters list of village Kotohguri under Dhing Police Station subsequent to 1971, the year in which the petitioner claims to have shifted his residence to village Khalpia under Mikirbheta Police Station in the Morigaon district as well as the voters list of village Khalpia under Mikirbheta Police Station in the Morigaon district after and prior to the date of shifting. The voters list produced before the Court reveals that the name of the petitioner Nur Islam @ Noor @ Nurul Islam, son of Isab continued to appear in the voters list of village Kotohguri under Dhing Police Station till the year 1979 and thereafter it discontinued. Correspondingly, in respect of village Khalpia under Mikirbheta Police Station in the Morigaon district, the name of the petitioner Nur Islam @ Noor @ Nurul Islam started appearing from 1989 downwards and the same name in respect of village Khalpia under Mikirbheta Police Station could not be found in respect of the voters list prior to 1989 or in fact also prior to 1971, being the acclaimed date of shifting of the petitioner.

8. A submission is also made that it took sometime for the petitioner to have his name deleted from the voters list of the original village and to include it in the voters list of the village where the petitioner claims to have shifted and such stand cannot be said to be not consistent with the ground realities. Accordingly it is explained that the continuation of the name in the voters list of the petitioner Nur Islam @ Noor @ Nurul Islam in the voters list of village Kotohguri under Dhing Police Station up to the year 1979 can be reasonably explained.

But more importantly, it is taken note of that the name of the petitioner Nur Islam @ Noor @ Nurul Islam did not appear in the voters list where he had shifted i.e. village Khalpia under Mikirbtheta Police Station prior to 1989 and more so prior to 1971 when the shifting had taken place. The said information from the voters list makes it discernible that the name of Nur Islam @ Noor @ Nurul Islam son of Isab did not find place in the voters list of village Khalpia under Mikirbtheta Police Station prior to the acclaimed date of shifting from village Kotohguri under Dhing Police Station. The said information may be an indication that the shifting had actually taken place as claimed by the petitioner.

9. In the circumstance, we remand the matter back to the Foreigners Tribunal No.3 Morigaon to examine the implication of the complete voters list of village Kotohguri under Dhing Police Station prior and subsequent to the date of shifting as well as the voters list of village Khalpia under Mikirbtheta Police Station again prior and subsequent to the date of shifting and pass a reasoned order thereon. If the petitioner is of the view that any further evidence can be rendered, the petitioner would be at liberty to render further evidence before the Tribunal. If the Tribunal is of the view that some more materials are required either from the Home Department, Government of Assam or from the Election Commission of India, accordingly such requisition may be made.

10. The petitioner to appear before the Tribunal on 30.03.2023. Any order that the Tribunal may pass shall prevail over the earlier order dated 21.12.2018 passed in Case No.F.T.107/2016. If the order of the Tribunal goes in favour of the petitioner, a reasoned order be passed and if it is against the petitioner, the implication under the law shall follow.

11. Till the reasoned order is passed, no coercive action be taken against the petitioner.
12. A copy of the voters lists of the two villages i.e., village Kotohguri under Dhing Police Station and village Khalpia under Mikirbheta Police Station, in vernacular, produced before the Court by Mr. AI Ali, learned counsel for the Election Commission of India shall be kept as part of the record.
13. Send back the LCR.
14. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant