

GAHC010076482020



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

Case No. : WP(C)/2281/2020

JALAL ALI @ JALALUDDIN ALI
S/O LT. NABAD ALI MIA @ NABAD ALI @ NAWAB ALI, R/O VILL. AHATA,
P.S. MUKALMUA, DIST. NALBARI, ASSAM, PIN-781126

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-781006

3:THE ELECTION COMMISSION OF INDIA
REP. 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 FOREIGNERSS TRIBUNAL NO. 2

NALBARI
DIST. NALBARI
ASSAM
PIN-781335

6:THE DEPUTY COMMISSIONER
NALBARI
DIST. NALBARI
ASSAM
PIN-781335

7:THE SUPERINTENDENT OF POLICE (B)
NALBARI
DIST. NALBARI
ASSAM
PIN-781335

8:THE OFFICER IN CHARGE OF MUKALMUA POLICE STATION
MUKALMUA
DIST. NALBARI
ASSAM
PIN-78112

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 NELSON SAILO

ORDER

Date : 12.06.2023
(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1 and 4, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the Election Commission of India and Mr. N.K. Das, learned counsel for the

respondent No. 6, being the Deputy Commissioner, Nalbari.

2. The petitioner Jalal Ali @ Jalaluddin Ali was referred to the Foreigners' Tribunal No. 2, Nalbari 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 F.T.(Nal-2) Case No. 80/18 corresponding to F.T. Case No. 123/12 was registered. The Tribunal had rendered its opinion dated 25.04.2019 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 1966 of village Haripur, Mouza Senga in the Kamrup district which contains the name of A. Basir Miya son of Nazir at Sl. No. 114 and that of Nabab Ali Miya son of Basir at Sl. No. 116. It is claimed that A. Basir Miya is the grandfather and Nabab Ali Miya is the father of the petitioner. The petitioner thereupon relies upon the voters' list of 1985 of village Naptipara, Mouza North Barkhetri in the Nalbari district which contains the name of Jalal Uddin son of Noyab at Sl. No. 1117. It is claimed that Jalal Uddin of the voters' list of 1985 of village Naptipara is the petitioner himself.

4. It is sought to be explained that the father of the petitioner Noyab as reflected in the voters' list of 1985 of village Naptipara is in fact Nabab Ali Miya of the voters' list of 1966 of village Haripur. It is also sought to be explained that the petitioner Jalaluddin Ali after the death of his father had shifted to village Naptipara for a better living. To substantiate that there was a shifting, the petitioner intends to examine Sahab Ali son of late Wazed Ali, aged about 58 years, resident of village Haripur and accordingly a prospective evidence-on-affidavit that Sahab Ali may render had been annexed as Annexure 24 page 123

of the writ petition. In the prospective evidence-on-affidavit that Sahab Ali may render, in paragraph 11 thereof it is stated that the petitioner Jalaludddin Ali was his neighbour at village Haripur and was born in the year 1955. It is also stated by Sahab Ali that being neighbours he knew Jalaluddin Ali well and that later on for a better living and after his marriage, Jalaluddin Ali had shifted to village Naptipara. After having shifted, Sahab Ali maintains a good cordial relation with Jalaluddin Ali and often visits his house and Jalaluddin Ali also visits his house at village Haripur.

5. The fact that the intended witness often visits the house of the petitioner as stated in paragraph 22 of the prospective evidence-on-affidavit of Sahab Ali, a prayer is made that if Sahab Ali is allowed to be examined as a witness, the petitioner can prove the fact that there was a shifting from village Haripur to village Naptipara and once the shifting is proved, the petitioner can rely upon the voters' list of 1985 of village Naptipara that he is the son of Noyab who is in fact Nabab Ali Miya of the voters' list of 1966 of village Haripur.

6. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Nalbari to examine the aforesaid voters' lists of 1966 and 1985 of village Haripur and Naptipara, respectively as well as to allow the petitioner to adduce the evidence of Sahab Ali son of Wazed Ali and any further evidence that the petitioner intends to rely upon. The respondents in the Home Department may cross-examine the witnesses that are intended to be relied upon by the petitioner as well as may make their own verification as to whether Nabab Ali Miya of the voters' list of 1966 of village Haripur and Noyab the father of Jalal Uddin of the voters' list of 1985 of village Naptipara are one and the same person and thereafter submit a report before the Tribunal.

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 25.04.2019 in F.T.(Nal-2) Case No. 80/18 corresponding to F.T. Case No. 123/12 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 15.07.2023. 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