

GAHC010076602019



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

Case No. : WP(C)/2361/2019

SHAHAJAHAN ALI
S/O. AMJAD ALI, R/O. VILL. KISMAT HASDAHA PART-III, P.O. KISMAT
HASDAHA, PS- DHUBRI, DIST.- DHUBRI, ASSAM.

VERSUS

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

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

3:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.- 781006.

4:THE DY. COMMISSIONER
KAMRUP(M)
DIST. KAMRUP(M)
ASSAM. PIN- 781001.

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP(M)
DIST.- KAMRUP(M)
ASSAM- 781001.

6:THE STATE CO-ORDINATOR OF NRC
ASSAM
PO AND PS- BHANGAGARH
GHY.-05
DIST.- KAMRUP(M)
ASSAM.

7:THE DY. COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSAM- 783301.

8:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
DIST. DHUBRI
ASSAM- 783301

Advocate for the Petitioner : MR. S ISLAM

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

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

ORDER

Date : 01.06.2023
(A.M. Bujor Barua, J)

Heard Mr. S. Islam, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. T. Pegu, learned counsel for the respondent No. 2, being the authorities in the Election Commission of India; Mr. G. Sarma, learned counsel for the respondents No. 3, 5, 7 and 8, being the authorities in the Home Department and Mr. N.K. Das, learned counsel for the respondent No. 4, being the Deputy Commissioner, Kamrup(M) .

2. The petitioner Shahajahan Ali was referred to the Foreigners' Tribunal No.

2, Kamrup(M) 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. Case No. 1810/2015 was registered. The Tribunal had rendered its opinion dated 03.11.2018 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 Kismat Hasdaha Pt. III in the Dhubri district which contains the name of Sapatullah Sk son of Pataru at Sl. No. 163. The petitioner also relies upon the voters' list of 1993 of village Kismat Hasdaha Pt. III in the Dhubri district which contain the name of Sapatulla Sk son of Pataru at Sl. No. 395 and that of Amzad Ali son of Sapatulla Sk at Sl. No. 396. It is claimed that Sapatulla Sk is the grandfather and Amzad Ali is the father of the petitioner. Reliance is also placed in the voters' list of 1997 of village Kismat Hasdaha Pt. III in the Dhubri district which contains the name of Amzad Ali son of Sapatulla at Sl. No. 675 and that of Sahera Bibi wife of Amzad Ali at Sl. No. 676 and it is claimed that Sahera Bibi is the mother of the petitioner. Thereafter reliance is placed in the voters' list of 2015 of village Kismat Hasdaha Pt. III in the Dhubri district which contains the name of Shahajahan Ali son of Amzad Ali at Sl. No. 701. The petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 has been discharged, inasmuch as, the voters' list of 2015 of village Kismat Hasdaha Pt. III shows that Shahajahan Ali is the son of Amzad Ali whereas the voters' list of 1993 of the same village contains the name of Amzad Ali along with Sapatulla Sk where the name of Sapatullah Sk also appears in the voters' list of 1966 of village Kismat Hasdaha Pt. III.

4. In view of the above, we remand the matter back to the Foreigners'

Tribunal No. 2, Kamrup(M) to examine the aforesaid voters' lists of 1966, 1993, 1997 and 2015 of village Kismat Hasdaha Pt. III in the Dhubri district. The State respondents in the Home Department through the Superintendent of Police(B), Kamrup(M) may make their own verification as to whether Shahajahan Ali of the voters' list of 2015 of village Kismat Hasdaha Pt. III and the petitioner proceedee are one and the same person and thereafter submit a report the Tribunal.

5. 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 03.11.2018 in F.T. Case No. 1810/2015 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 07.07.2023. 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

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Comparing Assistant