

GAHC010077692018



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

Case No. : WP(C)/2461/2018

RABI HUSSAIN @ NABI HUSSAIN AND 7 ORS.
S/O. LATE ASMAT ALI, RESIDENT OF VILLAGE DURABANDHI, P.O.
LUCHANABORI, P.S. MAIRABARI, DIST. MORIGAON, ASSAM.

2: RABIYA KHATUN
D/O. LATE ASMAT ALI
RESIDENT OF VILLAGE DURABANDHI
P.O. LUCHANABORI
P.S. MAIRABARI
DIST. MORIGAON
ASSAM.

3: ABU BAKKAR SIDDIQUE
S/O. LATE ASMAT ALI
RESIDENT OF VILL. DURABANDHI
P.O. LUCHANABORI
P.S. MAIRABARI
DIST. MORIGAON
ASSAM.

4: ABDUL SATTAR
S/O. LATE ASMAT ALI
RESIDENT OF VILLAGE DURABANDHI
P.O. LUCHANABORI
P.S. MAIRABARI
DIST.- MORIGAON
ASSAM.

5: ABUL KALAM
S/O. LATE ASMAT ALI
RESIDENT OF VILLAGE DURABANDHI
P.O. LUCHANABORI
P.S. MAIRABARI
DIST. MORIGAON

ASSAM.

6: ABUL KASEM
S/O. LATE ASMAT ALI
RESIDENT OF VILLAGE DURABANDHI
P.O. LUCHANABORI
P.S. MAIRABARI
DIST. MORIGAON
ASSAM.

7: ABDUL HASEM
S/O. LATE ASMAT ALI
RESIDENT OF VILLAGE DURABANDHI
P.O. LUCHANABORI
P.S. MAIRABARI
DIST. MORIGAON
ASSAM.

8: NURUN NEHAR
D/O. LATE ASMAT ALI
RESIDENT OF VILLAGE DURABANDHI
P.O. LUCHANABORI
P.S. MAIRABARI
DIST. MORIGAON
ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
TO BE REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI.

2:THE STATE OF ASSAM
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER

DIST. MORIGAON
ASSAM.

4:THE SUPERINTENDENT OF POLICE (B) MORIGAON
DIST. MORIGAON
ASSAM.

5:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN ASOKA ROAD
NEW DELHI-110001

6:THE STATE CO-CORDINATOR

NATIONAL REGISTRATION OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI.

7:THE MEMBER

FOREIGNER TRIBUNAL
MORIGAON
DISTRICT- MORIGAON
ASSAM

Advocate for the Petitioner : MRS. S P HUSSAIN

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

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

ORDER

Date : 25.04.2023

(A.M. Bujor Barua, J)

Heard Mrs. S.P. Hussain, learned counsel for the petitioners and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. A. Kalita, learned counsel for the respondents No. 2, 4 and 7, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Morigaon and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authority in the Election Commission of India.

2. The petitioners herein namely, Md. Rabi Hussain, Rabia Khatun, Abu Bakkar Siddique, Abdul Sattar, Abul Kalam, Abul Kasem, Abdul Hasem and

Nurun Nehar all of whom claim to be the sons or daughters of Asmat Ali of village Durbandhi were referred to the Foreigners' Tribunal No. 5, Morigaon for rendering an opinion as to whether they are persons who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T. (C) Case No. 236/2016 (New Number)/F.T.(C) Case No. 1524/2012(Old Number) was registered. The Tribunal rendered its opinion dated 20.11.2017 arriving at its conclusion that the petitioners are foreigners 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 petitioners rely upon the voters' list of 1971 of village Durabandhi, PS Laharighat in the Nagaon district which contains the name of Asmat Ali son of A. Rahman at Sl. No. 382. The petitioners also rely upon the voters' list of 1989 of village Durabandhi, PS Laharighat in the Nagaon district which, amongst others, contains the names of Rabi Hussain son of Asma at Sl. No. 1070, Abubakkar son of Asmat at Sl. No. 1074 and A. Sattar son of Asmat at Sl. No. 1076. The petitioners accordingly claim that the burden under Section 9 of the Foreigners Act, 1946 had been discharged inasmuch as, if Asma/Asmat of the voters' list of 1989 of village Durabandhi and Asmat Ali son of A. Rahman of the voters' list of 1971 of village Durabandhi are one and the same person, the petitioners have established that they are citizens of India.

4. In view of the provisions of the voters' lists of 1971 and 1989 of village Durabandhi, we remand the matter back to the Foreigners' Tribunal No. 5, Morigaon to examine as to whether Asmat Ali son of A. Rahman of the voters' list of 1971 of village Durabandhi and Asma/Asmat who is referred in the voters' list of 1989 of village Durabandhi to be the father of Rabi Hussain, Nurul Haque, Abubakkar and A. Sattar are one and the same person. For the purpose, the petitioners may produce the complete voters' lists of village Durabandhi from

the year 1971 up to 1989 to establish their claim. The State respondents in the Home Department through the Superintendent of Police(B), Darrang may also make their own verification as to whether Asmat Ali son of A. Rahman of the voters' list of 1971 of village Durabandhi and Asma/Asmat of the voters' list of 1989 of village Durabandhi are one and the same person. Upon undertaking the aforesaid exercise, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioners, the same shall prevail over the earlier opinion dated 20.11.2017 in F.T.(C) Case No. 236/2016 (New Number)/F.T.(C) Case No. 1524/2012(Old Number) and if it is against the petitioners, consequences under law shall follow. The petitioners to appear before the Tribunal on 02.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioners.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

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Comparing Assistant