

GAHC010078552018



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

Case No. : WP(C)/2467/2018

NASIR UDDIN
S/O. LT. HIRA MIYA @ IRA MIYA, VILL. SIDDESWARPUR, P.O. HINDU
BLOCK, P.S. DABAKA, DIST. HOJAI, ASSAM.

VERSUS

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

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.

3:THE ELECTION OF INDIA

NEW DELHI

4:THE DY. COMMISSIONER

HOJAI

5:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS
ASSAM
GUWAHATI

6:THE SUPDT. OF POLICE (B)

HOJAI
DIST. HOJAI

7:THE OFFICER IN CHARGE

DABAKA POLICE STATION
DIST. HOJA

Advocate for the Petitioner : MR H R A CHOUDHURY

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

17.07.2023

[Achintya Malla Bujor Barua, J.]

Heard Ms. S. Das, learned counsel for the petitioner. Also heard Mr. A.K. Dutta, learned CGC appearing for the respondent No.1; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2, 6 and 7; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.3; Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.4 and Ms. L. Devi, learned standing counsel, NRC, appearing for respondent No.5.

2. The petitioner Nasir Uddin had been referred to the Foreigners' Tribunal, Nagaon Court No.10th, at Sankardev Nagar, Hojai, for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 resulting in registration of F.T.(D) Case No.1586/2016 corresponding to SP's FT Case No.75/2015 and F.T.(D) Case No.1437/2015 corresponding to SP's FT Case No.660/2013. The Tribunal

rendered an opinion dated 26.02.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In paragraph 4 of the opinion of the Tribunal dated 26.02.2018, it is sought to be explained that during pendency FT(D) Case No.1586/2016, another reference being FT(D) Case No.1437/2015 was also received. We find that the said observation is incoherent inasmuch as a reference which was registered prior i.e. 1437/2015 could not have been received by the Tribunal subsequent to a reference which was registered later being 1586/2016. Be that as it may, two references are not maintainable on the same cause against the same person and consequently we delete FT(D) Case No.1586/2016 and proceed to determine being FT(D) Case No.1437/2015.

4. Ms. S. Das, learned counsel for the petitioner in the writ proceeding relies upon the voters list of 1966 of village Siddeswarpur, P.S.-Hojai, in the Nagaon district, which contains the names of Hajiramjan Ali S/o Aanumiya at Sl.No.212 and that of Hira Miya S/o Hajiramjan Ali at Sl.No.216 and it is claimed that Hajiramjan Ali is the grandfather and Hira Miya is the father of the petitioner. Further reference is made to the voters list of 1970 of village Siddeswarpur, which also contains the names of Hajiramjan Ali and Hira Miya, respectively at Sl.Nos.212 and 216. Reference is also made to the voters list of 1997 of village Siddeswarpur, which contains the names of Nasir S/o Hira Miya at Sl.No.210 although he is shown to be a 'D' voter and that of Fulbanu Nessa W/o Hira Miya at Sl.No.206. It is noticed that the name of Fulbanu Nessa W/o Hira Miya is also available at Sl.No.218 of the voters list of 1966 of village Siddeswarpur. Accordingly, the petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 had been discharged.

5. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966, 1970 and 1997 of village Siddeswarpur and pass a reasoned order thereof. The petitioner to also produce the copies of the voters lists of village Siddeswarpur from the year 1966 to 1997 for examination of the Tribunal. The

respondents in the Home Department may make their own verification and submit a report before the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 26.02.2018 and if it is against the petitioner, consequential action shall follow.

6. The petitioner shall accordingly appear before the Tribunal on 02.08.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

7. Send back the LCR immediately.

8. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant