

GAHC010081972022



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

Case No. : WP(C)/3327/2022

ABDUL ALI
S/O- LATE KURPAN ALI
R/O- VILLAGE- GOLIBANDHA
MOUZA- PAKA
P.S- SARTHEBARI
DIST- BARPETA
ASSAM

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

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

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S ROAD.

BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

5:THE FOREIGNERS TRIBUNAL-III
BARPETA DIST- BARPETA
ASSAM
PIN-781301

6:THE DEPUTY COMMISSIONER
P.O-BARPETA DIST- BARPETA
ASSAM
PIN-781301

7:THE SUPERINTENDENT OF POLICE (B)
P.O-BARPETA DIST- BARPETA
ASSAM
PIN-781301

8:THE OFFICER IN CHARGE
SARTHEBARI POLICE STATION

P.O-SARTHEBARI DIST- BARPETA
ASSAM
PIN-78130

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 ROBIN PHUKAN

ORDER

23.05.2023

(AM Bujor Barua, J)

Heard Ms. D Ghosh, 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 Superintendent of Police (B) Barpeta as well as the Officer-in-Charge of Sarthebari Police Station, Barpeta and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Abdul Ali was referred to the Foreigners Tribunal No.III Barpeta for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T. Case No.2167(III)/2016 corresponding to Ref.IMDT Case No.5869/98 wherein an opinion dated 27.12.2018 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, petitioner relies upon the voters list of 1970 of village Dhumarpathar P.S. Sarbhog in the present Barpeta district which contains the name of Kurpan Ali son of Samsher Ali at Sl.No.227. It is stated that Kurpan Ali of the 1970 voters list is the father of the petitioner. The petitioner further relies upon the voters list of 1989 of village Dhumarpathar which contains the name of Abdul Ali son of Kurpan at Sl.No.244.

5. If the information contained in the voters list of 1970 and 1989 of village

Dhumarpathar is correct, the petitioner may have discharged the burden under Section 9 of the Foreigners Act 1946 that he is a citizen of India. But, however, it is noticed that although the two voters list are of the same village, but there is no continuity in the voters list between the year 1970 and 1989 and therefore, the petitioner would be required to produce the complete voters list from 1970 to 1989 of village Dhumarpathar. It is also noticed that Moriom Nessa is one of the wife of Kurpan, whereas Abdul Ali is the son of Kurpan as per the voters list of 1989, but no voters list is available where the name of Moriom Nessa wife of Kurpan and Kurpan may appear together, either in the voters list 1970 of village Dhumarpathar or any of the voters list thereafter.

6. In the circumstance, the petitioner shall produce any such voters list which may contain the name of Moriom Nessa and Kurpan Ali together in the same voters list.

7. Accordingly, the matter stands remanded back to the Tribunal to examine the aforesaid aspect. The respondents in the Home Department may also make their own verification on the authenticity of the aforesaid two voters list and also as to whether the writ petitioner/proceedee Abdul Ali and the Abdul Ali of the 1989 voters list of village Dhumarpathar are one and the same person and submit a report before the Tribunal, if so advised.

8. Accordingly, the petitioner shall appear before the Tribunal on 07.07.2023. Both the petitioner and the State respondents may be allowed to produce any further evidence, if so advised.

9. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 27.12.2018 of the Foreigners Tribunal No.III Barpeta in F.T. Case No.2167(III)/2016 corresponding to Ref.IMDT Case No.5869/98 and if it is against the petitioner, consequential action under the law shall follow.

10. Till the reasoned order is passed, no coercive action be taken against the petitioner.

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

JUDGE

JUDGE

Comparing Assistant