

GAHC010086542020



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

Case No. : WP(C)/2692/2020

ABUL HUSSAIN BARBHUIYA @ ABDUL HUSSAIN BARBHUYAN
S/O. LT. BABUR ALI BARBHUIYA, R/O. VILL. BAJANTIPUR PART-II, P.S.
HAILAKANDI, DIST. HAILAKANDI, ASSAM, PIN-788156.

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
ASSAM SECRETARIAT DISPUR
GUWAHATI
ASSAM
PIN-781006.

3:THE DY. COMMISSIONER OF POLICE (B)
GUWAHATI
DIST. KAMRUP (M)
ASSAM
PIN-781001.

4:THE STATE COORDINATOR OF NRC
OFFICE OF THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI
ASSAM

PIN-781005.

5:THE MEMBER
FOREIGNERS TRIBUNAL NO.4
KAMRUP (M)
GUWAHATI
ASSAM
PIN-781005.

6:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
SANSAD MARG AREA
NEW DELHI
PIN-110001.

7:THE DY. COMMISSIONER
KAMRUP (M)
C/O. OFFICE OF THE DY. COMMISSIONER
KAMRUP (M)
M.G. ROAD
PANBAZAR
GUWAHATI-781001.

8:THE OFFICER IN CHARGE
GORCHUK POLICE STATION
GORCHUK
KAMRUP (M)
ASSAM-781035

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

30.03.2023

(A.M. Bujor Barua, J)

Heard Ms. H Betala, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. G Sarma, learned counsel for the

State respondents in the Home Department of Government of Assam, Mr. T. Pegu, learned counsel for the Election Commission of India and Mr. NK Das Das, learned counsel for the Deputy Commissioner, Kamrup (M).

2. The petitioner Abul Hussain Barbhuiya @ Abdul Hussain Barbhuyan had been referred to the Foreigners Tribunal No. 4, Kamrup (M) for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of FT Case No. 1654/2017, wherein an opinion dated 30.09.2019 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Bhajantipur No. 1 under police station Hailakandi in the present Hailakandi district, which contains the name of Babur Ali son of Monteshwar Ali at serial No. 226 and that of Moirang Bibi wife of Babur Ali at serial No. 228 and both of them are shown to be residing in the same house No. 71. Petitioner also relies on the voters list of 2005 of village Bajantipur Part-I, which contains the name of Moirang Bibi Barbhuiya, wife of Babur Ali Borbhuiya at serial No. 118 and that of Abul Hussain Barbhuiya son of Babur Ali Borbhuyan at serial No. 123 and both Moirang Bibi Barbhuiyan and Abul Hussain Barbhuiya are shown to be residing in the same house No. 45.

4. We have noticed that the name of Moirang Bibi appeared along with Babur Ali in the voters list of 1966 and also along with Abul Hussain Barbhuiya in the voters list of 2005.

5. In view of the materials being available on record, the matter is remanded back to the Tribunal to examine as to whether the voters list of 1966 and the voters list of 2005 of village Bajantipur Part-I show that the petitioner is a citizen

of India and accordingly pass a reasoned order thereon. The petitioner shall produce the complete voters list from the year 1966 to 2005 of village Bajantipur Part-I before the Tribunal. The State respondents shall also verify as to whether Abul Hussain Barbhuiya of the voters list of 2005 and the Abul Hussain Barbhuiya the writ petitioner proceedee are one and the same person, if necessary by visiting the house No. 45 of village Bajantipur Part-I.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 06.12.2019. If the reasoned order goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the Foreigners Tribunal No. 4, Kamrup(M) on 08.05.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant