

GAHC010087622020



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

Case No. : WP(C)/2994/2020

EUNUS ALI @ ENNAS ALI AND 2 ORS.
S/O- LT. SABDAR ALI, VILL- GERJAIPAM, P.S. KACHUA, DIST.- NAGAON,
ASSAM

2: BABUL HUSSAIN @ BABAL MIYA
S/O- LT. SABDAR ALI
VILL- RAMONI PATHER
P.S. KACHUA
DIST.- NAGAON
ASSAM

3: ABUL HUSSAIN @ ABDUL HUSSAIN
S/O- LT. SABDAR ALI
VILL- GERJAIPAM
P.S. KACHUA
DIST.- NAGAON
ASSA

VERSUS

THE UNION OF INDIA AND 8 ORS.
REP. BY THE SECY., HOME DEPTT., NEW DELHI, INDIA

2: THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3: THE CHIEF ELECTION COMMISSIONER
OF INDIA
NIRVACHAN BHAVAN
NEW DELHI

4:THE STATE ELECTION COMMISSIONER OF ASSAM

DISPUR
GUWAHATI-06.

5:THE STATE COORDINATOR

NATIONAL REGISTRAR OF CITIZENS (NRC)
ASSAM
GUWAHATI.

6:THE FOREIGNERS REGIONAL REGISTRATION AUTHORITY (FRRA)

NAGAON
ASSAM.

7:THE DY. COMMISSIONER CUM RETURNING OFFICER

DIST. NAGAON
ASSAM.

8:THE SUPDT. OF POLICE

NAGAON
ASSAM.

9:THE SUPDT. OF POLICE (B)

NAGAON
DIST. MORIGAON
ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 26.06.2023

(A.M. Bujor Barua, J)

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioners and Ms. L. Devi, learned counsel for the respondents No. 1 and 5, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 6, 8 and 9, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondents No. 3 and 4, being the authorities in the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 7, being the Deputy Commissioner, Nagaon.

2. The petitioner No. 1 Eunus Ali @ Ennas Ali was referred to the Foreigners' Tribunal No. 2, Nagaon for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946 and accordingly F.T. Case No. 1157/2011 was registered. The Tribunal had rendered its opinion dated 19.11.2019 arriving at its conclusion that the petitioner No. 1 is a foreigner within the meaning of foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner No. 1 relies upon a sale deed No. 5826 dated 24.06.1965, wherein the purchaser is depicted as Md. Sabdar Ali son of late Ahed Ali, resident of village Ramani Pathar. The petitioner No. 1 also relies upon the voters' list of 1970 of village Ramani Pathar, PS Kampur in the Nagaon district which contains the name of Sabdar Ali son of Ahed at Sl. No. 4. It is claimed that Sabdar Ali is the father of the petitioner. The petitioner further

relies upon the voters' list of 1985 of village Ramani Pathar, PS Raha in the Nagaon district which contains the names of Md. Sabdar Ali son of Ahed Ali at Sl. No. 45 and Kampana Nessa wife of Md. Adar Ali at Sl. No. 46. It is clarified that Kampana Nessa is in fact the wife of Md. Sabdar Ali who is wrongly shown as Md. Adar Ali. Further reliance is also placed upon the voters' list of 1997 of village Ramani Pathar, PS Kachuwa in the Nagaon district which contains the names of Sabdar Ali son of Ahed Ali at Sl. No. 145, Komani Nessa wife of Sabdar Ali at Sl. No. 146 and Safiya Khatun wife of Sabdar Ali at Sl. No. 147 and it is claimed that Komani Nessa and Safiya Khatun are two wives of Sabdar Ali. Reliance is also placed upon the voters' list of 1997 of village Ramani Pathar, PS Kachuwa in the Nagaon district which contains the names of Babul Miya at Sl. No. 184 who is supposed to be son of Sabdar Ali, but is shown to be the wife and Amina Khatun wife of Babul Miya at Sl. No. 185. Further reliance is placed upon the voters' list of 1997 of village Ramani Pathar, PS Kachuwa in the Nagaon district which contains the names of Eunos Ali son of Sabdar Ali at Sl. No. 186 and Rahima Khatun wife of Eunos Ali at Sl. No. 187. It is claimed that Eunos Ali son of Sabdar Ali is the petitioner No. 1 himself.

4. It is sought to be clarified that Eunos Ali son of Sabdar Ali resides in house No. 73 whereas Babul Miya son of Sabdar Ali resides in house No. 72 and Sabdar Ali himself resides in house No. 56 and upon the enlargement of the family, the different sons of Sabdar Ali are residing in different households within the same village.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Nagaon to examine sale deed No. 5826 dated 24.06.1965, the original certified copy of which is to be produced by the petitioner before the Tribunal as well as the aforesaid voters' lists of 1970, 1985 and 1997 of village

Ramani Pathar in the Nagaon district. The petitioner to produce the complete voters' lists of the years 1966, 1970, 1985 and 1997 of village Ramani Pathar for examination of the Tribunal. The State respondents in the Home Department may make their own verification as to whether the different sons of Sabdar Ali as indicated above are residing in different households within the same village Ramani Pathar and thereafter submit a report before the Tribunal. The State respondents in the Home Department may also make their own verification as to whether Eunus Ali of the voters' list of 1997 of village Ramani Pathar and the writ petitioner No. 1 Eunus Ali @ Ennas Ali are one and the same person and thereafter submit a report before the Tribunal.

6. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner No. 1, the same shall prevail over the earlier opinion dated 19.11.2019 in F.T. Case No. 1157/2011 and if it is against the petitioner No. 1, consequences under law shall follow. Till the reasoned order is passed, no coercive action be taken against the petitioner No. 1.

7. It is noticed that the Tribunal had passed a common opinion dated 19.11.2019 in F.T. Case No. 1157/2011 in respect of Unish Ali, F.T. Case No. 1156/2011 in respect of Babul Hussain and F.T. Case No. 1158/2011 in respect of Abdul Hussain. We have decided the opinion rendered in F.T. Case No. 1157/2011 in respect of Unish Ali.

8. When individual references are made before the Tribunal, it is for the Tribunal to pass individual opinions against them instead of making an effort to pass a common opinion in respect of more than one person who are referred, although there may be a claim that the persons are either brothers or they belong to the same family.

9. For the aforesaid reason, the opinion dated 19.11.2019 in F.T. Case No. 1156/2011 in respect of Babul Hussain and F.T. Case No. 1158/2011 in respect of Abdul Hussain are set aside. Babul Hussain and Abdul Hussain to appear before the Tribunal on the date given hereinbelow and the Tribunal shall adjudicate their citizenship by passing separate opinions based upon any material that they may produce. In the event Babul Hussain of F.T. Case No. 1156/2011 and Abdul Hussain of F.T. Case No. 1158/2011 do not appear before the Tribunal on the given date, the respondents in the Home Department would be at liberty to take them into custody inasmuch as, the opinion rendered against them has been interfered on a technical ground rather than on merit. All the three petitioners to appear before the Tribunal on 01.08.2023.

Writ petition stands disposed of as indicated above.

J U D G E

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Comparing Assistant