

GAHC010090332018



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

Case No. : WP(C)/2798/2018

NAZIR HUSSAIN @ NAZIR HOSEN AND ANR.
S/O- LT AFSAR ALI SHEIKH @ APSAR ALI @ ABSAR ALI SHEIKH @ AFSAR
ALI, PERMANENT R/O- VILL- BAURARTOL, P.S. LAKHIPUR, DIST-
GOALPARA, ASSAM, TEMPORARY R/O- VILL- FOFONGA PART-I, P.S. AGIA,
DIST- GOALPARA, ASSAM

2: SHAHJAHAN ALI
S/O- NAZIR HUSSAIN @ NAZIR HOSEN
PERMANENT R/O- VILL- BAURARTOL
P.S. LAKHIPUR
DIST- GOALPARA
ASSAM
TEMPORARY R/O- VILL- FOFONGA PART-I
P.S. AGIA
DIST- GOALPARA
ASSA

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-1

2: THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

3: THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

4: THE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)

ASSAM
BHANGAGARH
GHY-5

5:THE DY. COMMISSIONER
GOALPARA
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
ASSAM

7:THE OFFICER-IN-CHARGE
AGIA POLICE STATION
DIST- GOALPARA
ASSA

Advocate for the Petitioner : MR. M U MAHMUD

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

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE NELSON SAILO**

O R D E R

12.06.2023

(A.M. Bujor Barua, J)

Heard Mr. M Ali, 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. AI Ali, learned counsel for the Election Commission of India and Mr. NK Das, learned counsel for the Deputy Commissioner, Goalpara.

2. Both the petitioner No. 1 Nazir Hussain @ Nazir Hosen and petitioner No. 2 Shahjahan Ali had been referred to the Foreigners Tribunal No. 1, Goalpara for rendering an opinion as to whether they are the persons who entered the State

of Assam from the specified territory on or after 25.03.1971 resulting in registration of FT Case No. 6656/G/16 and FT Case No. 6655/G/16. It is claimed that the petitioner No. 2 Shahjahan Ali is the son of Nazir Hussain, who is the petitioner No. 1. In the circumstance, if the petitioner No. 1 can prove his citizenship, the issue of citizenship of petitioner No. 2 would follow accordingly. The two references were answered by the Tribunal by a common opinion dated 09.04.2018 declaring both the petitioners to be foreigners. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioners rely on the voters list of 1966 of village Baruartol, police station-Lakhipur in the Goalpara district, which contains the name of Apsar Ali son of Late Tenu Sheikh at serial No. 97 and it is claimed that Apsar Ali is the father of the petitioner No. 1. To substantiate the same, reliance is placed in the voters list of 1979 of village Baruartol, which contains the name of Afsar Ali son of Kinu sheikh at serial No. 27 and Nazir Husen son of Afsar Ali at serial No. 29 and both of them are shown to be residing in the same house No. 8. Accordingly, a claim is made that the petitioner No. 1 Nazir Hussain had discharged the burden under section 9 of the Foreigners Act, 1946 to prove that he is a citizen of India.

4. In view of the above, in respect of the petitioner No. 1 Nazir Hussain, we remand the matter back to the Tribunal to examine the voters list of 1966 and 1979 of village Baruartol. The respondents in the Home Department may also make their own verification as to whether Nazir Hussain of the 1979 voters list of village Baruartol and the writ petitioner No. 1 Nazir Hussain are one and the same person and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

5. In respect of the petitioner No. 2 Shahjahan Ali also, the matter is

remanded back to the Tribunal to arrive at its conclusion as to whether the petitioner No. 2 is the son of the petitioner No. 1. If a conclusion is arrived that the petitioner No. 2 is the son of the petitioner No. 1 and further if the petitioner No. 1 is found to be a citizen of India, appropriate orders be also passed in respect of the petitioner No. 2. If on the other hand, the petitioner No. 1 is found to be not a citizen of India, appropriate orders be also passed in respect of the petitioner No. 2.

6. If the reasoned order is in favour of the petitioners, the same shall prevail over the earlier opinion dated 09.04.2018 and if it goes against the petitioners, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 15.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant