

GAHC010099882018



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

Case No. : WP(C)/3162/2018

KHALILUR RAHMAN
S/O- LT MOSLEM UDDIN @ MOSLEM, VILL- HAZIPARA, P.S. HOWLY, DIST-
BARPETA (ASSAM), PIN-781316

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-110001

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

3:THE DY. COMMISSIONER
BARPETA
DIST- BARPETA
ASSAM
PIN-781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSAM
PIN-781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI
110001

6:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)

BANGAGARH
GHY-3

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

O R D E R

01.08.2023

(A.M. Bujor Barua, J)

Heard Ms. P Ghosh, 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. J Payeng, 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 Ms. K Phukan, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Khalilur Rahman had been referred to the Foreigners Tribunal No. 1, Barpeta for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No. 485/2011, wherein an opinion dated 09.05.2018 was rendered declaring the petitioner to be 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 Hajipara, police station-Barpeta in the present Barpeta district, which contains the name of Muslim son of Rushan at serial No. 62 and it is claimed

that Muslim son of Rushan is the father of the petitioner. The voters list of 1970 of village Hajipara contains the name of Muslim son of Rushan at serial No. 81 and that of Rul Khatun wife of Muslim at serial No. 84 and both of them are shown to be residing in the same house No. 16. Ful Khatun is claimed to be the mother of the petitioner and her age is noticed to be 29 years. Ful Khatun had rendered evidence as DW-2 before the Tribunal presenting herself to be Ful Khatun, wife of Muslim, resident of village Hajipara and aged about 76 years. In her evidence, the DW-2 had deposed that the petitioner Khalilur Rahman is her son.

4. To verify the matter further, we required the Election Commission of India to produce the complete voters lists of village Hajipara from the years 1966 up to 2016 and accordingly all such voters lists have been produced before the Court. Upon examination, it is noticed that from the year 1989 onwards, the name of Khalilur Rahman appears along with that of Ful Khatun in respect of village Hajipara and both of them are shown to be residing in the same house. In the voters list of 1989, the name of Muslim also appears along with Ful Khatun and Khalilur Rahman.

5. The aforesaid materials give a prima-facie indication that the petitioner may have discharged the burden under section 9 of the Foreigners Act, 1946 that he is not a foreigner. The only aspect remains is whether the person who had deposed before the Tribunal as DW-2 by stating her name to be Ful Khatun is actually the Ful Khatun, wife of Muslim of the voters list of 1970 onwards of village Hajipara or some other person may have presented herself before the Tribunal as Ful Khatun.

6. The Tribunal may examine the said aspect by requiring the DW-2 Ful Khatun to produce her Adhar Card for its examination.

7. In view of the above, we remand the matter back to the Tribunal to examine all the voters list of village Hajipara from the years 1966 to 2016, more particularly the voters list of 1989 containing the name of Muslim, son of Rushan, Ful Khatun, wife of Muslim and Khalilur Rahman, son of Muslim and the evidence of DW-2. After doing the needful, the Tribunal shall pass a reasoned order thereon. The complete voters list of village Hajipara produced by the Election Commission of India be returned back. But, however, a photocopy thereof may be provided to the petitioner for further presentation before the Tribunal.

8. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 09.05.2018 and if it goes against the petitioner, consequence as per law shall follow.

9. The petitioners shall appear before the concerned Foreigners Tribunal on 31.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

10. The writ petition is allowed as indicated above.

11. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant