

GAHC010102782018



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

Case No. : WP(C)/3219/2018

MAINUL HOQUE
S/O. LATE ABDUL KARIM, R/O. VILL. SOLMARI, P.S. MOIRABARI, DIST.
MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS, GOVT. OF INDIA, NEW DELHI-1.

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

3:THE SUPERINTENDENT OF POLICE (B)
MORIGAON

P.O. AND DIST. MORIGAON
ASSAM.

4:THE DEPUTY COMMISSIONER OF MORIGAON
P.O. AND DIST. MORIGAON
ASSAM.

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI.

6:THE N.R.C. CO-ORDINATOR
NATIONAL REGISTER OF CITIZEN (NRC)

ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

Date : 27.06.2023
(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2 and 3 being the authorities under the Home Department of Government of Assam, Ms. U Das, learned counsel for the respondent no. 4 being the Deputy Commissioner, Morigaon and Mr. AI Ali, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Mainul Hoque had been referred to the Foreigners' Tribunal No. 5, Morigaon for rendering an opinion as to whether he is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration Case No. F.T. (C)307/2017. The Tribunal rendered an opinion dated 23.10.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1965 of village Solmari P.S. Laharighat in the Nagaon district which contains the name of Abdul Karim S/O Roshan at Sl. No. 262. It is claimed that Abdul Karim is the father of the petitioner. Further reference is made to the voters' list of 1993 of village Solmari which contains the names of Abdul Karis S/O Roshan at Sl. No. 448 and that of Mainul S/O Abdul Karim at Sl. No. 459.

5. It is clarified that Abdul Karis is incorrectly spelt and actually it ought to be Abdul Karim. The said explanation is accepted inasmuch as Mainul at Sl. No. 459 is shown to be son of Abdul Karim. It is claimed that Mainul of the 1993 voters' list of village Solmari is the writ petitioner himself and as his name appears along with Abdul Karim and the name of Abdul Karim appears in the voters' list of 1965 of village Solmari, the burden under Section 9 of the Foreigners Act, 1946 had been discharged by the petitioner.

6. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' list of 1965 of village Solmari as well as all the subsequent voters' list between 1965 and 1993 and thereupon, pass a reasoned order. The petitioner to produce all the complete voters' lists from the year 1965 upto 1993 of village Solmari before the Tribunal for its examination. The respondents in the Home Department to also make their own enquiry and verification and thereafter, submit a report before the Tribunal. Upon doing the needful, a reasoned order be passed by the Tribunal.

7. The petitioner to appear before the Tribunal on 03.08.2023.

8. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 23.10.2017 passed in Case No. F.T.(C)307/2017 and if against, consequence under the law is applicable to the petitioner.

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

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant