

GAHC010108842023



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

Case No. : WP(C)/2944/2023

1. NUR MAHAMMAD
SON OF LATE ISAR ALI @ ESAR ALI,
PERMANENT RESIDENT OF VILLAGE- DHUMBANDHA,
POLICE STATION- BAGUAN,
DISTRICT- GOALPARA, ASSAM.

VERSUS

1. THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF ASSAM,
SHASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA

G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005.

5:THE DEPUTY COMMISSIONER
GOALPARA
POST OFFICE- GOALPARA
POLICE STATION- GOALPARA
DISTRICT- GOALPARA
ASSAM
PIN- 783101.

6:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
POST OFFICE- GOALPARA
POLICE STATION- GOALPARA
DISTRICT- GOALPARA
ASSAM
PIN- 783101.

7:THE OFFICER-IN-CHARGE OF BAGUAN POLICE STATION
POST OFFICE- GOALPARA
DISTRICT- GOALPARA
ASSAM
PIN- 783101

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 09-08-2023

(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned counsel for the respondent No.1 & 4 being the Union of India, Mr. G. Sarma, learned

Counsel appearing for the Home Department, Government of Assam being the respondent No.2, 6 & 7, Mr. T. Pegu, learned counsel for the respondent No.3 being the Election Commission of India and Mr. R. Talukdar, learned Advocate for the respondent No.5 being the Deputy Commissioner, Goalpara.

2. The petitioner Nur Mahammad was referred to the Foreigners' Tribunal No.4, Goalpara for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T. Case No.FT (G-4)911/19 (Ref F.T. Case No.116/09). The Tribunal rendered an opinion dated 06.03.2023, 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 Dhumbandha Police Station Lakhipur in the Goalpara District which contains the name of Isar Ali son of Khoyan Ali at Sl. No.127 and that of Jaheron Bibi wife of Isar Ali at Sl. No.128, where the age of Isar Ali is shown as 50 years and the age of Jaheron Bibi is shown as 27 years. The Voters List of 1970 of Village Dhumbandha also contains the name of Isar Ali son of Khoyan Ali and that of Jaheron Bibi wife of Isar Ali at Sl. No.121 and 122 respectively. The Voters List of 1979 of Village Dhumbandha contains the name of Isar Ali son of Moyan Ali at Sl. No.76 and that of Jaherun Bibi wife of Isar Ali at Sl. No.77. Further reliance is placed in the Voters List of 1985 of Village Dhumbandha which contains the name of Isar Ali son of Moinuddin at Sl. No.539, Jehatan Nesa wife of Isar Ali at Sl. No.550 and that of Nur Mohammad Sheikh son of Isar Ali at Sl. No.551, where Isar Ali and Jehatan Nesa are shown to be residing in the House No.82 and Nur Mohammad Sheikh in the House No.83.

4. As the name of Nur Mohammad appears along with Isar Ali in the same Voters List of the year 1985 of Village Dhumbandha and in the Voters Lists of Village Dhumbandha of 1966 and 1970, the name of Isar Ali appears, the petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

5. Further the petitioner also intends to examine one Rafiz Uddin Ahmed son of Late Nagor Ali Zotder whose name appears along with Isar Ali in the 1970 Voters List of Village Dhumbandha for the purpose that Rafiz Uddin Ahmed has the special means of knowledge to satisfy the requirement of Section 50 of the Evidence Act to establish the relationship

between Isar Ali and Nur Mohammad.

6. In view of the above, the matter is remanded back to the Tribunal to allow the petitioner to produce the complete Voters Lists of 1960, 1966, 1979 and 1985 of Village Dhumbandha as well as the evidence of Rafiz Uddin Ahmed before the Tribunal and to pass a reasoned order and the respondents in the Home Department may cross-examine Rafiz Uddin Ahmed, if any evidence is rendered, as well as to make their own verification and submit the report before the Tribunal, on doing the needful.

7. The petitioner to appear before the Tribunal on 02.09.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 06.03.2023, passed in F.T. Case No.FT (G-4)911/19 (Ref F.T. Case No.116/09) and if it is against him, the consequence under the law may follow.

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

9. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant