

GAHC010115042019



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

Case No. : WP(C)/3400/2019

MAFIJ ALI
S/O- LATE BAJU SHEIKH 2 BAJER UDDIN, VILL- SALMAARA PART-I, P.O
CHOUDHURY CHAR, P.S- FAKIRGANJ, DIST- DHUBRI, PIN- 783349

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

4:THE STATE COORDINATOR
NRC
ASSAM
GUWAHATI- 781005

5:THE DEPUTY COMMISSIONER
KAMRUP(M)
DIST- KAMRUP (M)
ASSAM
PIN- 781001

6:THE SUPERINTENDENT OF POLICE (B)
KAMRUP(M)
ASSA

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 MRS. JUSTICE SUSMITA PHUKAN KHAUND**

O R D E R

26.06.2023

(A.M. Bujor Barua, J)

Heard Mr. A Matin, 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 Ms. U Das, learned counsel for the Deputy Commissioner, Kamrup(M).

2. The petitioner Mafij Ali had been referred to the Foreigners Tribunal No. 2, Kamrup(M) 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.590/2017, wherein an opinion dated 06.03.2019 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 No. 39 Salmara Part-III, police station Dakhin Salmara in the present South Salmara Mankachar district, which contains the name of Bajju Seikh son of Ayan Seikh at serial No. 362. It is claimed that Bajju Seikh is the father of the

petitioner. Reliance is also made to the voters list of 1970 of village Salmara Part-III, which contains the name of Baju Seikh son of Ayan at serial No. 404 and Akser Ali son of Ayan at serial No. 405 and it is claimed that Baju Seikh and Akser Ali are brothers. Akser Ali had rendered evidence before the Tribunal as DW-2, wherein he stated that Mafij Ali is the son of Baju Seikh of the 1966 voters list of village Salmara Part-III.

4. Reference is also made to the voters list of 1989 of village Salmara Part-I, which contains the name of Baju Seikh son of Ayan Uddin at serial No. 748 and that of Barek Ali son of Ratu at serial No. 750 and both of them are shown to be residing in the same house No. 95. It is clarified that Barek Ali is actually the son of Baju Seikh and not Ratu. In view of the fact that Baju Seikh and Barek Ali are residing in the same house No. 95, the aforesaid clarification can be accepted. Barek Ali also deposed before the Tribunal as DW-3 by stating that the petitioner Mafij Ali is the son of Baju Seikh.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of village Salmara Part-III and Part-I of the years 1966, 1970, 1985 and 1989 as well as the evidence rendered by the DW-2 and DW-3. The respondents in the Home Department of Government of Assam may cross-examine the DW-2 and DW-3 as may be advised to extract the veracity of the evidence rendered by them. The respondents in the Home Department, Government of Assam may also make their verification and submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 06.03.2019 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 01.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant