

GAHC010115592020



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

Case No. : WP(C)/3470/2020

MD. SUBED ALI
S/O- MD. AKIN ALI, R/O- VILL- NO. 1 BORKUR, P.S. BHURAGAON, DIST.-
MORIGAON, ASSAM, PIN- 782121

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE UNION HOME SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-06

3:THE MEMBER
FOREIGNERS TRIBUNAL NO.2
MORIGAON
ASSAM
PIN- 782105

4:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
ASSAM- 782105

5:THE OFFICER-IN-CHARGE
BHURAGAON P.S.
DIST.- MORIGAON
ASSAM
PIN- 782121

6:THE STATE COORDINATOR
OFFICE OF THE STATE COORDINATOR
NRC ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005

7:THE ELECTION COMMISSIONER OF INDIA
ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
PIN- 11000

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 30.05.2023
(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 3, 4 and 5, being the authorities in the Home Department and Mr. T. Pegu, learned counsel for the respondent No. 7, being the authorities in the Election Commission of India.

2. The petitioner Md. Subed Ali was referred to the Foreigners' Tribunal No. 2, Morigaon for rendering an opinion as to whether he is a person who had

entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. F.T.(C) 97/09 was registered. The Tribunal had rendered its opinion dated 27.03.2019 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Kuptimari, P.S. Laharighat in the Nagaon district which contains the name of Akin Ali son of Sulom Sheikh at Sl. No. 625 as well as the voters' list of 1970 of village Kuptimari, P.S. Laharighat in the Nagaon district which contains the names of Akin Ali son of Choluk Sheikh at Sl. No. 651, Hazrat Ali son of Akin at Sl. No. 652, Fazar Ali son of Akin at Sl. No. 653 and Fatema Nessa wife of Akin at Sl. No. 654 and all of them are shown to be residing in the same house No. 140. It is stated that Hazrat Ali and Fazar Ali are brothers of the petitioner. The petitioner further relies upon the voters' list of 1977 of village Kuptimari, P.S. Laharighat in the Nagaon district which contains the names of Akin Ali son of Choluk Sheikh at Sl. No. 1207, Hazrat Ali son of Akin at Sl. No. 1208, Fazar Ali son of Akin at Sl. No. 1209, Samsuddin son of Akin at Sl. No. 1210 and Iyad Ali son of Akin at Sl. No. 1211 and all of them are shown to be residing in the same house No. 183. Further reliance is also placed on the voters' list of 1985 of village Kuptimari, P.S. Laharighat in the Nagaon district which contains the names of Akilani Munsu son of Sulum at Sl. No. 39, Hazrat Ali son of Abilani at Sl. No. 40, Faizul Hoque son of Akilani at Sl. No. 42, Samsul Hoque son of Akilani at Sl. No. 44, Iyad Ali son of Akinali at Sl. No. 46 and Subedali son of Akinali at Sl. No. 48 and all of them are shown to be residing in the same house No. 25. It is claimed that Subedali of the voters' list of 1985 of village Kuptimari is the petitioner himself.

4. It is noticed that continuously from the voters' list of 1970 onwards in every subsequent voters' lists one son of Akin Ali is increasing and that names of all the sons appearing in the voters' list of 1985 is consistent with the voters' list of 1977 with the addition of Subedali in the voters' list of 1985.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Morigaon to examine the aforesaid voters' lists of 1966, 1970, 1977 and 1985 of village Kuptimari. The State respondents in the Home Department through the Superintendent of Police(B), Morigaon may make their own verification as to whether Akilani Munsu of the voters' list of 1985 and Akin Ali of the voters' lists of 1966, 1970 and 1977 are one and the same person as well as to whether Subedali of the voters' list of 1985 and the petitioner proceedee are one and the same person and thereafter submit a report before the Tribunal.

6. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.03.2019 Case No. F.T.(C) 97/09 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 03.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant