

GAHC010116622019



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

Case No. : WP(C)/3621/2019

HASEN ALI @ HASEN ALI MANDAL
S/O. LT. KEFAT ALI @ KEFAT MANDAL, VILL. BARBARI, P.S. SIPAJHAR,
DIST. DARRANG, ASSAM.

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

4:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZEN
G.S. ROAD
BHANGAGARH
GUWAHATI-782005.

5:THE MEMBER

FOREIGNERS TRIBUNAL (4TH) DARRANG

MANGALDAI
ASSAM.

6:THE DY. COMMISSIONER

DARRANG
MANGALDAI
ASSAM.

7:THE SUPDT. OF POLICE (B)

DARRANT
ASSAM-781007

Advocate for the Petitioner : MR M HOQUE

Advocate for the Respondent : ASSTT. S G I

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

05.06.2023

(AM Bujor Barua, J)

Heard Mr. MD S Hoque, learned counsel for the petitioner. Also heard L Devi, learned CGC appearing for the respondents in the Union of India as well as for the respondents in the NRC, Ms. A Verma, learned counsel for respondents in the Home Department of the Government of Assam, Mr. Al Ali, learned counsel for the respondents in the Election Commission of India and Mr. N K Das, learned counsel for the Deputy Commissioner, Mangaldai.

2. The petitioner Hasen Ali was referred to the Foreigners Tribunal 4th, Darrang at Mangaldai for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971,

resulting in the registration of FT 4th Case No. 135/STR/2017 wherein the Tribunal rendered an opinion dated 27.12.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ petition, the petitioner relies upon the voters' list of 1966 of village Puthimrai Chapori which contains the names of Kifat Mandal son of Sayed at serial No. 80 and Karful wife of Kifat at serial No. 82 as well as that of Husen Ali son of Kifat at serial No. 79 and all of them are shown to be residing in the same House No. 25. The petitioner also relies upon the voters' list of 1985 of village Puthimari, which contains the name of Md. Kifat Mandal son of Saiyed Mandal at serial No. 353 and that of Hasen Ali son of Kifat at serial No. 357. It is claimed that Hasen Ali is the petitioner himself and as his name appears with Md. Kifat Mandal of the 1966 voters list, it is established that Md. Kifat Mandal is the father of the petitioner, where the name of Kifat Mandal son of Saiyed Mandal appears in the voters' list of 1966 of the same village Puthimari. But it is noticed that in the voters list of 1971 of village Puthimrai, the name of the wife of Kifat Mandal is shown as Sakitan Nessa and not Karful as of the 1966 voters list. It is sought to be explained that Karful and Sakitan Nessa are two different wives of Kifat Mandal. But at the same time, it is also noticed that in the voters' list of 1985 of village Puthimari, the name of Husen Ali son of Kifat of the 1966 voters' list, who again is shown as Husen Ali son of Saiyed in the 1971 voters' list, do not appear in the voters' list of 1985.

4. But, however, we remand back the matter to the Tribunal to examine the voters' list of 1965 and 1971 of village Puthimrai and 1985 of village Puthimari and pass a reasoned order thereon. The Tribunal to examine as to why the name of Husen Ali does not further appear in the voters' list of 1985 as well as

why the name of Karful wife of Kifat does not appear any further. The Tribunal is also to examine as to whether the village Puthimrai of the 1966 and 1971 voters' list and village Puthimari of the 1985 voters' list are one and the same village. The respondents in the Home Department also make their own verification and submit a report before the Tribunal and after doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.12.2018 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioner shall appear before the concerned Foreigners Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.

8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant