

GAHC010118312021



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

Case No. : WP(C)/4061/2021

MD JABBAR ALI
S/O- LT. MONTAZ ALI, PERMANENT R/O- VILL- BHOIRAR PAM, P.S.-
BAGHBAR, DIST.- BARPETA, ASSAM, PIN- 781308, PRESENTLY RESIDING
AT RAILWAY GATE, DHARMANAGAR, GHY, P.S. SATGAON, DIST.- KAMRUP
(M), ASSAM, PIN- 781027

VERSUS

THE UNION OF INDIA AND 9 ORS
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

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

3:THE ELECTION COMMISSION OF INDIA
REP. 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
GHY

ASSAM
PIN- 781005

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

6:THE DY. COMMISSIONER
BARPETA
DIST.-BARPETA
ASSAM
PIN- 781301

7:THE FOREIGNERS TRIBUNAL KAMRUP (M) NO. 4TH
AT GUWAHATI
HEDAYATPUR
GHY-03
DIST.- KAMRUP (M)
ASSAM

8:THE DY. COMMISSIONER OF POLICE (B)
CITY GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

9:THE OFFICER-IN-CHARGE OF SOUTH BAGHBAR P.S.
P.O. BAGHBAR
DIST.- BARPETA
ASSAM
PIN- 781308

10:THE OFFICER-IN-CHARGE OF SATGAON P.S.
P.O. SATGAON
GHY
ASSAM
PIN- 78102

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 : 22.03.2023

(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 4, being the Union of India and the State Co-ordinator of NRC respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 7, 8, 9 and 10, being the authorities in the Home Department; Mr. A. Ali, learned counsel for the respondent No. 3, being the Election Commission of India and Ms. K. Phukan, learned counsel for the respondents No. 5 and 6, being the Deputy Commissioner, Kamrup(M) and the Deputy Commissioner, Barpeta respectively.

2. The petitioner Md. Jabbar Ali was referred to the Foreigners' Tribunal No. 4, Kamrup(M) 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 F.T. Case No. FT(K(M)-4) 1670/17 was registered. The Tribunal rendered its opinion dated 25.02.2021 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 Bhoirarpam, P.S. Baghbar in the Kamrup district wherein at Sl. No. 310 the name of Montaz Ali son of Darug Ali and at Sl. No. 311 the name of Raison Nessa wife of Montaz Ali appear and also the voters' list of 1970 of village Bhoirarpam, P.S. Baghbar in the Kamrup district wherein at Sl. No. 324 the name of Montaz Ali son Darug Ali and at Sl. No. 325 the name of Raison Nessa

wife of Montaz Ali appear. The petitioner also relies upon the voters' list of 1993 of village Bhoirarpam, P.S. Baghbar in the Barpeta district wherein at Sl. No. 457 the name of Montaz Ali son of Darug Ali, at Sl. No. 458 the name of Raison Nessa wife of Montaz Ali and at Sl. No. 459 the name of Jabbar Ali son of Montaz Ali appear and the all the three persons are shown to be residing in the same house No. 215.

4. Accordingly, the petitioner claims that as the name of Montaz Ali appears in the voters' list of 1966 and 1970 of village Bhoirarpam, P.S. Baghbar in the Kamrup district and the name of the petitioner appears along with Montaz Ali in the voters' list of 1993 of village Bhoirarpam, P.S. Baghbar in the Barpeta district, therefore he has established that he is a citizen of India.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 4, Kamrup(M) to examine the authenticity and correctness of the voters' list of 1966 of village Bhoirarpam, P.S. Baghbar in the Kamrup district which contains the names of Montaz Ali son of Darug Ali and Raison Nessa wife of Montaz Ali and the voters' list of 1970 of village Bhoirarpam, P.S. Baghbar in the Kamrup district which also contains the names of Montaz Ali son of Darug Ali and Raison Nessa wife of Montaz Ali and the voters' list of 1993 of village Bhoirarpam, P.S. Baghbar in the Barpeta district which contains the names of Montaz Ali son of Darug Ali, Raison Nessa wife of Montaz Ali as well as Jabbar Ali son of Montaz Ali. Upon such examination, 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 25.02.2021 in F.T. Case No. FT(K(M)-4) 1670/17 and if it is against the petitioner, consequences under law shall follow.

6. Upon the matter being remanded back, the petitioner to produce the

complete voters' list from the year 1966 up to the year 1993 of village Bhoirarpam. The petitioner may also produce any other relevant document, if so advised. The State authorities in the Home Department through the Superintendent of Police (B), Kamrup(M) shall also make a verification on the claim of the petitioner that Montaz Ali of the voters' list of 1966 and 1970 of village Bhoirarpam is the father of the petitioner. The verification be made as to whether Montaz Ali and his family are some other persons who are existing in village Bhoirarpam or whether the petitioner is the son of Montaz Ali of the said village. The requirement of the verification is as per the provisions of paragraph 26 of a judgment passed by the Hon'ble Supreme Court in the case of the *Sarbananda Sonowal Vs. Union of India and Another*, reported in (2005) 5 SCC 665. The petitioner to appear before the Tribunal on 27.04.2023. 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.

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Comparing Assistant