

GAHC010125822018



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

Case No. : WP(C)/3821/2018

AJGAR ALI
S/O. LT. OSMAN ALI, VILL. SOLMARI, P.S. MOIRABARI, DIST. MORIGAON,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG,
NEW DELHI

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GHY.

3:THE DY. COMMISSIONER

MORIGAON
P.O.
P.S. AND DIST. MORIGAON
ASSAM

4:THE SUPDT. OF POLICE (B)

MORIGAON
P.O.
P.S. AND DIST. MORIGAON
ASSAM

5:THE ELECTION COMMISSIONER OF INDIA

THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI

6:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHAT

Advocate for the Petitioner : MR. A R SIKDAR

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. AR Sikdar, 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, Morigaon.

2. The petitioner Ajgar Ali had been referred to the Foreigners Tribunal No. 5, Morigaon 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.FT(C) 91/2015 (New Number) and FT(C) 805/2012 (Old Number),

wherein an opinion dated 29.11.2017 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 1965 of village Salmarigaon, police station Laharighat in the present Nagaon district, which contains the name of Osman Ali son of Tahiruddin at serial No. 264 and that of Afarjan Nessa wife of Osman at serial No. 265 and both of them are shown to be residing in the same house No. 49. It is claimed that Osman Ali is the father and Afarjan Nessa is the mother of the petitioner. The same information is also available in the voters list of 1970 of village Salmarigaon. The petitioner thereupon relies upon the Jamabandi in respect of a plot of land at village Salmarigaon wherein in place of Osman Ali son of Tahiruddin, the name of Ajgar Ali son of Osman Ali had been mutated, which again is corresponding to the order of the circle officer dated 28.11.1990, by which the name of Ajgar Ali son of Osman Ali had been mutated in place of Osman Ali, son of Tahiruddin.

4. By virtue of the inheritance through the order of mutation, the petitioner claims that he had discharged the burden under section 9 of the Foreigners Act, 1946 to prove that he is the son of Osman Ali of the 1966 voters list of village Salmarigaon.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of village Salmarigaon of the years 1966 and 1970 containing the name of Osman Ali son of Tahiruddin and also the Jamabandi of the same village Salmarigaon wherein the order of mutation whereby the name of Ajgar Ali had been mutated in place of Oskan Ali is available. The Home Department of Government of Assam may make their verification as to whether Ajgar Ali of the Jamabandi of village Salmarigaon and the writ petitioner Ajgar Ali are one and the same person 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 29.11.2017 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