

GAHC010126962023



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

Case No. : WP(C)/3444/2023

MAZID MIA
SON OF MOKSHED ALI @ MOKSHED
RESIDENT OF VILLAGE- RANIR PAM
P.S.- BAGHBAR, DISTRICT- BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
THE GOVT. OF INDIA,
SHASTRI BHAWAN, TILOK MARG, NEW DELHI- 1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE HOME
DEPARTMENT

DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND DISTRICT- BARPETA
ASSAM.

4:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
P.O.
P.S. AND DISTRICT- BARPETA
ASSAM.

5:THE ELECTION COMMISSIONER OF INDIA

THROUGH ITS SECRETARY

NIRBACHAN BHAWAN
NEW DELHI-1.

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION OF CITIZEN
(NRC)
ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. N J DUTTA

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 16.08.2023

(A.M. Bujor Barua, J)

Heard Mr. D. Hussain, 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 Co-ordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Mr. P. Sarma, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Mazid Mia was referred to the Foreigners' Tribunal No. 6, Barpeta for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 and accordingly Case No. F.T. 611/15 was registered. The Tribunal had rendered its opinion dated 25.10.2018 by arriving at its conclusion that the petitioner is a foreigner under the Foreigners Act, 1946. Being

aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Ranirpam, PS Baghbar in the Kamrup district which contains the name of Mokshed Ali son of Fakir Mia at Sl. No. 185. It is claimed that Mokshed Ali is the father of the petitioner. The petitioner also relies upon the voters' list of 1970 of village Ranirpam, PS Baghbar in the Kamrup district which contains the names of Mokshed Ali son of Fakir at Sl. No. 184 and Baharjan Nessa wife of Mokshed Ali at Sl. No. 179 and it is claimed that Baharjan Nessa is the mother of the petitioner. Further reliance is placed upon the voters' list of 1997 of village Ranirpam, PS Baghbar in the Barpeta district which contains the names of Mokshed Ali son of Faker at Sl. No. 52, Baharjan wife of Mokshed at Sl. No. 53 and Mazid Mia son of Mokshed at Sl. No. 54. It is claimed that Mazid Mia of the voters' list of 1997 of village Ranirpam is the petitioner himself and as the name of Mazid Mia appears along with Mokshed Ali and Baharjan in the same voters' list and all of them are shown to be residing in the same house No. 19 and further as the name of Mokshed Ali and Baharjan Nessa appears in the voters' list of 1970 of the same village and also the name of Mokshed Ali appears in the voters' list of 1966 of the same village, the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 6, Barpeta to examine the aforesaid voters' lists of 1966, 1970 and 1997 of village Ranirpam as well as the complete and continuous voters' lists of village Ranirpam from the year 1966 to 1997. The petitioner to produce the complete and continuous voters' lists of village Ranirpam from the year 1966 to 1997 for examination of the Tribunal. The petitioner may also rely upon any further material, if so advised. The State respondents in the Home Department

may make their own verification as to whether Mazid Mia of the voters' list of 1997 of village Ranirpam and the petitioner proceedee are one and the same person and thereafter submit a report before the Tribunal.

5. 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 25.10.2018 in Case No. F.T. 611/15 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 07.09.2023. 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