

GAHC010127632020



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

Case No. : WP(C)/3686/2020

NAZRUL ISLAM
S/O- SHUKUR ALI @ SUKUR ALI, R/O- VILL- PALARPAM, P.S.- BAGHBAR,
DIST.- BARPETA, ASSAM, PIN- 781308

VERSUS

THE UNION OF INDIA AND 8 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)
ASSAM
PIN- 781001

6:THE DY. COMMISSIONER
BARPETA
ASSAM
PIN- 781308

7:THE FOREIGNERS TRIBUNAL KAMRUP (M) NO. 2
AT GHY
HEDAYATPUR
GHY-03
DIST.- KAMRUP (M)
ASSAM

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

9:THE OFFICER-IN-CHARGE OF BAGHBAR P.S.
P.O. BAGHBAR
DIST.- BARPETA
ASSAM
PIN- 78130

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 : 26.04.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L

Devi, learned counsel for the respondent no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. A Kalita, learned counsel for the respondents no. 2 and 7 being the authorities under the Home Department of the Government of Assam, Ms. U Das, learned counsel for the respondents no. 5, 6 and 8 being the Deputy Commissioner, Kamrup, Deputy Commissioner, Barpeta and the Deputy Commissioner of Police (B), City Guwahati, Kamrup(M) and Mr. AI Ali, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India.

2. The petitioner Nazrul Islam had been referred to the Foreigners' Tribunal No. 2, Kamrup (M) for rendering an opinion as to whether he is a person who entered the State of Assam on or after 25.03.1971, resulting in registration of FT Case No. 301/2018. The Tribunal rendered an opinion dated 30.10.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved this writ petition is instituted.

4. In the writ petition, the petitioner relies on the voters' list of 1966 of village Sargaon which contains the name of Sukur Ali, S/O Mantaj at Sl. No. 487. The petitioner also relies on the voters' list of 1970 of village Sargaon which contains the name of Shukur Ali, S/O Mantaj at Sl. No. 445. Thereafter, the petitioner relies on the voters' list of 1985 of village Palarpam which contains the name of Shukur Ali, S/O Montaj at Sl. No. 593 and that of Sabiya Khatun, W/O Shukur Ali at Sl. No. 594.

5. A claim is made that Sukur Ali, S/O Montaj had in the meantime shifted from village Sargaon to village Palarpam and therefore, in the year 1985 his name appears in the voters' list of village Palarpam. The voters' list of 1989 of village Palarpam is also relied upon which also contains the name of Shukur Ali,

S/O Muntaj.

6. To establish that the petitioner Nazrul Islam is the son of Shukur Ali of village Palarpam, reliance is placed in certificate issued by the Head Master of Palar Pam ME School which contains the information that Md. Nazrul Islam is the son of Md. Sukur Ali of village Palar pam. Reliance is also placed in the voters' list of 1997 of village Palarpam which contains the name of Shukur Ali, S/O Mantaj at Sl. No. 19 and that of Sabiya Khatun, W/O Shukur at Sl. No. 20 and that of Nazrul Islam, S/O Shukur at Sl. No. 25. Accordingly, a claim is made that the burden under Section 9 of the Foreigners' Act, 1946 had been discharged by the petitioner.

7. As regards the factual aspect that Shukur Ali had shifted from village Sargaon to village Palarpam, the evidence of DW3 Sarbesh Ali, S/O Hossen Ali is relied upon. DW3 Sarbesh Ali in his evidence stated that he is the Gaon Burah of village Aligaon and Sargaon since the year 1981 and also the In-Charge Gaon Burah of village Palar pam from the year 2018. DW3 Sarbesh Ali states that he knows the petitioner proceedee well as he is the Gaon Burah of village but also states that he knows the parents of the proceedee petitioner personally as well as the other family members and makes a categorical statement that the DW3 and the father of the petitioner Shukur Ali were friends since childhood and therefore, he knows the family well.

8. As the DW3 has established a close proximity with the family of the petitioner proceedee, the evidence rendered that the petitioner is the son of Shukur Ali and that Shukur Ali had shifted from village Sargaon to village Palarpam cannot be wholly discarded. But Mr. A Kalita, learned counsel for the Home Department of the Government of Assam points out that in the evidence of DW3 there is no specific statement that Shukur Ali had shifted from village

Sargaon to village Palarpam. We also do not notice any cross examination of the evidence of the DW3 by the State authorities.

9. In the circumstance, we remand the matter back to the Tribunal to enable the petitioner to adduce further evidence of DW3 Sarbesh Ali as regards the factual aspect that Shukur Ali of Sargaon village had later on shifted to village Palarpam. In doing so, the State respondents may also cross examine the DW3 as regards the veracity of evidence that he may render/have rendered. The petitioner may also produce any further materials if so advised and the State authorities may also make a verification regarding the claim made by the petitioner in respect of all such materials that may have been produced and thereafter, submit a report. Upon doing the needful, a reasoned order be passed by the Tribunal.

10. The petitioner to appear before the Tribunal on 06.06.2023.

11. If the reasoned order is in favour of the petitioner, the same prevail over the opinion/order dated 30.10.2019 passed in FT Case No. 301/2018 and if against, consequence under the law is applicable to the petitioner.

12. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE