

GAHC010133602019



REPORTABLE

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

Case No. : WP(C)/4009/2019

ABDUR RAHIM @ ABDUL RAHIM
S/O- ABDUL ALI @ A ALI, VILL- BAGARIGURI, P.O AND P.S- JURIA, DIST-
NAGAON, ASSAM, PIN- 782124

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE MIN OF HOME AFFAIRS, GOVT OF INDIA, NEW DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
INDIA
NEW DELHI- 110001

3:THE STATE COORDINATOR
ASSAM
NRC
BHANGAGARH
GHY- 5

4:THE STATE OF ASSAM
REP. BY THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GHY- 6

5:THE SUPERINTENDENT OF POLICE (B)

NAGAON
DIST- NAGAON
ASSAM
PIN- 782001

6:THE DEPUTY COMMISSIONER
NAGAON
DIST- NAGAON
ASSAM
PIN- 78200

Advocate for the Petitioner : MR A HUSSAIN

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

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

JUDGMENT

15.06.2023

(AM Bujor Barua, J)

Heard Mr. A S Choudhury, learned counsel for the petitioner. Also heard Mr. J Payeng learned counsel for the respondents in the Home Department of Government of Assam as well as the The Superintendant of Police (B), Nagaon, Ms. L Devi, learned CGC appearing for the respondents in the Union of India, Mr. N K Das learned counsel appearing for the Deputy Commissioner, Nagaon and

heard Mr. G Sarma, learned counsel for the respondents in the Home Department of Government of Assam as well as the The Superintendant of Police (B) Barpeta, P.O & District Barpeta, Assam, Ms. L Devi, learned CGC appearing for the respondents in the Union of India, Mr. AI Ali, learned counsel for the respondents in the Election Commission of India.

2. The petitioner Abdul Rahim had been referred to the Foreigners' Tribunal No. 4th, Nagaon for rendering an opinion as to whether he is a foreigner within a meaning of Foreigners' Act, 1946, resulting in the registration of FT Case No. 246/2016, wherein the Tribunal rendered an opinion dated 24.04.2019 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 1970 of village Bagariguri P.S Rupahihat in the district Nagaon, which contains the name of Hussain son of Sabed at Sl. No. 53 as well as that of Kandar Ali son of Sabed at Sl. No. 55 where both were shown to be residing in the same house no. 11. The petitioner claims that Hussain son of Sabed of the 1970 voters' list of village Bagariguri is his grandfather and Kandar Ali brother of Hussain is the younger brother of his grandfather. The petitioner thereupon relies upon the voters' list of 1997 of village Bagariguri which contains the name of Abdul Ali son of Hussain Ali at Sl. No. 8 and claims that Abdul Ali is the father of the petitioner. To establish that Abdul Ali is his father and Hussain of the 1970 voters' list is the grandfather, the petitioner relies upon the evidence of Ranjit Bhuyan as OPW-4 who claims to be the Gaonburah of village Bagariguri. The petitioner also relies upon the evidence rendered by Kandar Ali son of Late Sabed Ali of village Bagariguri as OPW-3. By relying upon the evidences of OPW-3 and OPW-4, the petitioner claims that he had discharged the burden that Hussain of the 1970 voters' list is the grandfather and Abdul Ali of the 1997 voters' list, both from village Bagariguri, is the father.

4. It is taken note of that the petitioner seeks to establish a relevant fact through the existence of a relationship i.e., Hussain of the 1970 voters' list is the grandfather and Abdul Ali of the 1997 voters' list is the father. The procedure to

be followed in establishing the relationship of one person to another is provided under Section 50 of the Evidence Act, 1872 which is extracted as below:-

“50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860). Illustrations

(a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant. Comments Contradiction in evidence of relationship of witness of trifle nature, not material in a partition suit; Gowhari Das v. Santilata Singh, AIR 1999 Ori 61.”

5. A reading of Section 50 of the Evidence Act, 1872 makes it discernible that where the Court has to form an opinion to the relationship of one person to another, the opinion expressed by any person as to the existence of such relationship, as a member of the family or otherwise, to have special means of knowledge of the subject, is the relevant fact.

6. In other words, we have to examine as to whether OPW-4 Ranjit Bhuyan had any special means of knowledge on the subject that Hussain of the 1970

voters' list is the grandfather and Abdul Ali of the voters' list of 1997 is the father of the petitioner. A reading of the evidence rendered by OPW-4 Ranjit Bhuyan does not make it discernible that the witness had any special means of knowledge on the subject. From such point of view, the evidence rendered by OPW-4 to establish the relationship would have to be rejected.

7. On a reading of the evidence of OPW-3 Kadar Ali, it is noticed that a claim is made that Kadar Ali is in fact Kandar Ali of the 1970 voters' list who by virtue of being the son of Sabed is the younger brother of Hussain of the 1970 voters' list. If it is to be accepted that Kadar Ali is the younger brother of Hussain, the requirement of having a special means of knowledge of the subject, *prima facie*, appears to have been satisfied by OPW-3.

8. From such point of view matter remanded back to the Tribunal to examine the evidence rendered by OPW-3 Kadar Ali son of Late Sabed of village Bagariguri. For the purpose of the Home Department may cross-examine the OPW-3 in any manner as per the advised, so as to extract the veracity as to whether OPW-3 Kadar Ali son of Late Sabed is in fact Kadar Ali son of Sabed of the 1970 voters' list of village Bagariguri and secondly whether the evidence rendered by him is factually correct. The respondent Home Department may also make verification and submit a report before the Tribunal. Upon doing the needful, the Tribunal may pass a reasoned order thereon.

9. It is stated that Kadar Ali had in the meantime died. If it is so as the State will not be able to cross-examine the said witnesses, the Home Department may make their own verification or inquiry in any manner as may be advised and submit a report before the Tribunal and such report if submitted will be

considered to be in the nature of cross-examination.

10. For the purpose as submitted by Mr. J Payeng, the petitioner to produce the subsequent voters' list containing the name of Kadar Ali, as well as the Death Certificate of Kadar Ali, so as to verify whether he had existed up to the year 2017 so as to render the evidence. Upon doing the needful, the Tribunal may pass a reasoned order thereon.

11. 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.

12. The petitioner shall appear before the concerned Foreigners Tribunal on 20.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

13. The writ petition is allowed as indicated above.

14. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant