

GAHC010154232022



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

Case No. : WP(C)/7411/2022

MD. ABDUL RAZAK @ REZZAKUDDIN @ A. RAZAK
SON OF LATE NAZIMUDDIN MUNCHI @ NAZIMUDDIN SIKDAR @
NASIMUDDIN,
RESIDENT OF VILLAGE- BHERBHERI,
POLICE STATION- LAKHIPUR,
DISTRICT- GOALPARA, ASSAM.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED 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
GUWAHATI
ASSAM

PIN- 781005.

5:THE FOREIGNERS TRIBUNAL NO. 2
KAMRUP(METRO)
GUWAHATI
DISTRICT- KAMRUP(METRO)

ASSAM
PIN- 781007.

6:THE DEPUTY COMMISSIONER
KAMRUP(METRO)
ASSAM
PIN- 781001.

7:THE SUPERINTENDENT OF POLICE (BORDER)
KAMRUP(METRO)
ASSAM
PIN- 781001.

8:THE OFFICER-IN-CHARGE OF LAKHIPUR POLICE STATION
POST OFFICE- LAKHIPUR

DISTRICT- GOALPARA
ASSAM

PIN- 783101

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 : 24.02.2023

(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1, being the Union of India. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the Election Commission of India; Ms. L. Devi, learned counsel for the respondent No. 4, being the State Co-ordinator of the NRC and Ms. K. Phukan, learned counsel for the respondent No. 6, being the Deputy Commissioner, Kamrup(M).

2. The petitioner Md. Abdul Razak @ Rezzakuddin @ A. Razak was referred to the Foreigners' Tribunal No. 2, Kamrup(M) for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971 and accordingly F.T. Case No. 1161/2015 was registered. The petitioner claims to be the son of Najimuddin Munchi son of Anchar Uddin Munchi whose name appears at Sl. No. 189 of the voters' list of 1966 of village Bherbheri, P.S. Lakhipur, Dist. Goalpara as well as in the voters' list of 1970 of village Bherbheri, P.S. Lakhipur, Dist. Goalpara at Sl. No. 138 which shows the name of Najimuddin son of Late Anchar Uddin. The petitioner also refers to the voters' list of 1985 of village Bherbheri, P.S. Lakhipur, Dist. Goalpara containing the name of Nasimuddin son of Asimuddin at Sl. No. 169 which also contains the name of Rezzakuddin son of Nazimuddin at Sl. 172 and that of Jahiran Bibi wife of Abdul Rezzak at Sl. No. 175 where it is stated that

Jahiran Bibi is the wife of Abdul Rezzak and all the three persons are shown to be from the same house No. 35. The petitioner also refers to the voters' list of 1997 of village Bherbheri, P.S. Lakhipur, Dist. Goalpara which contains the name of Abdul Rezzak son of Nazimuddin Sikdar at Sl. No. 561. The said voters' list of 1997 also contains the name of Nazimuddin Sikdar son of Ansar Uddin Sikdar at Sl. No. 563 and the name of Maleka Bibi wife of Nazimuddin Sikdar at Sl. No. 564 where the name of Maleka Bibi also appears in the voters' list of 1985 along with Nasimuddin of the same village as well as in the voters' list of 1979.

3. The objection raised by Ms. A. Verma, learned counsel for the respondents in the Home Department is that there is a variance and in some list it is Najimuddin Munchi, in another list it is Najimuddin and in other list it is Nazimuddin Sikdar and therefore an issue has been raised as to whether it is one and the same person. But at the same time, it is also noticed that the persons are more or less the same in the different lists , but are of the same household, meaning thereby, that if Najimuddin Munchi, Najimuddin and Nazimuddin Sikdar are two or three different persons, a further question would arise as to how three different persons would remain in the same household with the others. The aforesaid question also requires further determination.

4. Accordingly, we remand the matter back to the Foreigners' Tribunal No. 2, Kamrup(M) and the Tribunal to take note of the evidences and contents led and raised by the petitioner as well as any further evidence that may be led and also any further evidence if led by the Home Department. Thereafter the Tribunal to come to its own reasoned conclusion as to whether the petitioner can establish a link with Najimuddin son of Late Anchar Uddin and Najimuddin Munchi son of Anchar Uddin Munchi of the voters' list of 1970 and 1966 respectively of village Bherbheri, P.S. Lakhipur, Dist. Goalpara. The petitioner to appear before the

Tribunal on 03.04.2023. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 31.05.2022 in F.T. Case No. 1161/2015 and if it is against the petitioner, consequences under law shall follow. 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

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Comparing Assistant