

GAHC010163802019



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

Case No. : WP(C)/4965/2019

ABDUL REJAK
D/O- LT. EIR MOHAMMAD, VILL.- KANDHULIMARI, P.O. TARABARI, P.S.
RUPOHIHAT, DIST. NAGAON, ASSAM, PIN-

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-1.

2:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

4:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGAH
ASSAM
GHY.-5.

5:THE DEPUTY COMMISSIONER
NAGAON
ASSAM
PIN- 782001.

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
ASSAM

PIN- 782001.

7:THE OFFICER-IN-CHARGE
RUPOHIHAT P.S.
DIST.- NAGAON
ASSAM
PIN

Advocate for the Petitioner : MR. M U MAHMUD

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

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

ORDER

05.06.2023

(AM Bujor Barua, J)

Heard Mr. M U Mahmud, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing for the respondents in the Union of India as well as for the respondents in the NRC, Mr. G Sarma, learned counsel for the respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the respondents in the Election Commission of India and Mr. NK Das, learned counsel for the Deputy Commissioner, Nagaon.

2. The petitioner Abdul Rejak had been referred to the Foreigner Tribunal No. 3, Nagaon for rendering opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in the Registration of FT Case No. NFT (No.3)(D)823/2016, wherein the Tribunal rendered an opinion dated 14.05.2019 referring 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 Kandhulimari P.S Rupohihat in the Nagaon district, which contains the name of Eir Mohammad son of Mabali at serial No. 120. Petitioner also relies upon the voters' list of 1985 of village Kandhulimari, which contains the name of Eir Marammad S/o Mabali Sheikh at serial No. 195 and A. Rejak son of Eir Marammad at serial No. 111 and both of them are shown to be residing in the same house no. 23.

4. Petitioner claims that as his name appears along with Eir Marammad in the voters' list of 1985 of village Kandhulimari therefore, he has discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is a citizen.

5. In view of the above, the matter stands remanded back to the Tribunal to allow the petitioner to exhibit the voters list of 1965 and 1985 of village Kandhulimari and pass a reasoned order. The respondents in the Home Department may make their own verification and submit a report before the Tribunal. After doing the needful, the Tribunal may 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 14.05.2019 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the concerned Foreigners Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant