

GAHC010166042019



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

Case No. : WP(C)/5047/2019

MUSLEM UDDIN
S/O. LT. MD. AFIZ UDDIN @ MD. AFIZ UDDIN SHEIKH, VILL. CHANGELIA,
MOUZA- DAMKA CHOUKA BOUSHI, P.O. KALAHBHANGA, P.S. BARPETA
ROAD, DIST. BARPETA, ASSAM, PIN-781315.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TRILOK MARK, NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE COMM AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI-01.

4:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHATI-781005.

5:THE DY. COMMISSIONER OF BARPETA

P.O. AND P.S. BARPETA
DIST. BARPETA
ASSAM
PIN-781301.

6:THE SUPDT. OF POLICE (B)

BARPETA
P.O. AND DIST. BARPETA
ASSAM
PIN-781301

Advocate for the Petitioner : MR M AHMED

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 11.05.2023

(A.M. Bujor Barua, J)

Heard Mr. M. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the authorities in the Election Commission of India and Mr. N.K. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Muslem Uddin was referred to the Foreigners' Tribunal No. 8, Barpeta for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and F.T. Case No. 46/18 was registered. The Tribunal rendered its opinion dated 28.11.2018 arriving at its conclusion that the petitioner is a foreigner who had

entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1965 of village Chengelia, Mouza Damka Chaka Baushi in the present Barpeta district which contains the name of Afezuddin Sheikh son of Songsher Ali at Sl. No. 46. The petitioner thereupon relies upon the voters' list of 1985 also of village Chengelia, Mouza Damka Chaka Baushi in the present Barpeta district which contains the name of Afijuddin son of Songsher at Sl. No. 346 and that of Muslem Ali son of Afij at Sl. No. 347 and both are shown to be residing in the same house No. 180. The petitioner accordingly claims that the burden under Section 9 of the Foreigners Act, 1946 had been discharged to prove that he is an Indian citizen, inasmuch as, his name along with the name of his father Afijuddin appears in the same voters' list whereas the name of Afezuddin Sheikh appears in the voters' list of 1965 of the same village.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 8, Barpeta to examine the aforesaid aspect as to whether Afezuddin Sheikh son of Songsher Ali of the voters' list of 1965 of village Chengelia read with the voters' list of 1985 of the same village containing the name of Afijuddin son of Songsher along with Muslem Ali son of Afij, the burden to prove that the petitioner is an Indian citizen had been discharged. In doing so, the State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Barpeta may also make their own verification on the authenticity of the aforesaid voters' lists as well as whether the writ petitioner Muslem Uddin and Muslem Ali of the voters' list of 1985 of village Chengelia are one and the same person. 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 28.11.2018 in F.T. Case No. 46/18 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 26.06.2023. 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