

GAHC010178522018



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

Case No. : WP(C)/5719/2018

ABDUL AZIZ

S/O- LATE KASIM UDDIN AKAND, VILL- ABRARBHITA, P.O- BALABHITA,
P.S- BAGUAN, DIST- GOALPARA, ASSAM, PIN- 783129

VERSUS

THE UNION OF INDIA AND 5 ORS.

REP. BY THE MIN OF HOME AFFAIRS, NEW DELHI- 110001

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT

DISPUR

GUWAHATI- 781006

3:THE DEPUTY COMMISSIONER

GOALPARA

DIST- GOALPARA

ASSAM

783101

4:THE SUPERINTENDENT OF POLICE(B)

GOALPARA

ASSAM

PIN- 783101

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI- 110001

6:THE STATE COORDINATOR

NRC

BHANGAGARH

GUWAHATI- 78103

Advocate for the Petitioner : MR H R A CHOUDHURY

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 21.08.2023
(AM Bujor Barua, J)

Heard Mr. AM Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of Government of Assam, Mr. P Sarma, learned Additional Senior Government Advocate for the respondent no. 3 being the Deputy Commissioner, Goalpara and Mr. AI Ali, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India and.

2. The petitioner Abdul Aziz was referred to the Foreigners' Tribunal No. 4, Goalpara for rendering an opinion as to whether he is a foreigner under the Foreigners' Act, 1946 resulting in registration of F.T. Case No. FT(G-4) 1065/2016. The Tribunal rendered an opinion dated 29.06.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon a voters' list of 1966 of

village (305) Abararbhita Police Station Lakhipur in the Goalpara district which contains the name of Kusumuddin Akand S/O Palan Akand at Sl. No. 279. It is claimed that Kusumuddin Akand of the 1966 voters' list of village (350) Abararbhita is the father of the petitioner. The 1985 voters' list of village 131 Abararbhita Police Station Lakhipur also contains the name of Kajimuddin Akand S/O Palan and that of Abiran Nessa W/O Kajimuddin and it is claimed that Abiran Nessa is the mother of the petitioner. The voters' list of 1993 is of village (131) Abararbhita but the Police Station is shown to be Goalpara.

5. As the voters' list of 1966 is of village (305) Abararbhita under Police Station Lakhipur and the voters' list of 1993 is of village 131 Abararbhita under Police Station Goalpara, an enquiry was required to be made by the Home Department as to whether the two villages are one and the same village. Accordingly, a report dated 19.08.2023 has been submitted before the Court that (305) Abararbhita under Police Station Lakhipur and 131 Abararbhita under Police Station Goalpara are in fact one and the same village.

6. The voters' list of 1993 of village 131 Abararbhita contains the names of Kasim Uddin S/O Palam Akand at Sl. No. 132, Ajiran Nessa W/O Kasimuddin at Sl. No. 133 and that of Aziz Ali S/O Kasimuddin at Sl. No. 134. It is claimed that Aziz Ali is the writ petitioner Abdul Aziz himself. The voters' list of 1997 of village 131 Abararbhita contains the name of Abdul Ajim S/O Kasimuddin at Sl. No. 25, Ajiran Nessa W/O Abdul Ajij at Sl. No. 27.

7. It is stated that Ajiran Nessa W/O Abdul Ajij is wrongly shown and it ought to have been Ajiran Nessa W/O Kasim Uddin. But be that as it may it also contains the name of Suratan Nessa W/O Abdul Ajij at Sl. No. 28. Considering the name of Suratan Nessa W/O Abdul Ajij at Sl. No. 28, we have to be read Abdul Ajim as Abdul Ajij and not Abdul Ajim.

8. By referring the voters' lists of 1993 and 1997 of village 131 Abararbhita, the petitioner claims that Aziz Ali and Abdul Ajij are one and the same person. As the name of Kusumuddin Akand appears in the voters' list of 1966 of village (305) Abararbhita and the voters' list of 1985 of village 131 Abararbhita contains the name of Abiran Nessa and Kajimuddin together and the voters' lists of 1993 and 1997 contain the names of Ajiran Nessa along with Aziz Ali as well as Abdul Ajij, the petitioner claims that the burden under Section 9 has been discharged.

9. In view of the above the matter stands remanded back to the Tribunal to examine the complete and continuous voters' lists of village Abararbhita from the year 1966 to the year 1997 and pass a reasoned order if the information contained therein is consistent to show that Abdul Ajij is the son of Kusumuddin Akand of the 1966 voters' list of village (305) Abararbhita. The respondents in the Home Department may make their own enquiry and verification and thereafter, submit a report before the Tribunal as to whether Aziz Ali of 1993 voters' list of village 131 Abararbhita, Abdul Ajij of the 1997 voters' list of village 131 Abararbhita is in fact Abdul Aziz S/O Kusumuddin of the 1966 voters' list of village (305) Abararbhita. Upon doing the needful the Tribunal to pass a reasoned order.

10. The petitioner to appear before the Tribunal on 19.09.2023.

11. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 29.06.2018 passed in F.T. Case No. FT(G-4) 1065/2016 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.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant