

GAHC010184792021



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

Case No. : WP(C)/5909/2021

NUR UDDIN
D/O ABDUL BARIK SK,
VILLAGE KAIMBHASANI PART II,
PO PATAMARI, PS AND DIST DHUBRI, ASSAM

VERSUS

HE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS. GOVT OF INDIA. NEW DELHI 01

2:THE STATE OF ASSAM.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR GUWAHATI 06

3:THE ELECTION COMMISSION OF INDIA

NEW DELHI 01

4:THE CO ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC) ASSAM
BHANGAGARH
GUWAHATI 05

5:THE DEPUTY COMMISSIONER

KAMRUP (M) DISTRICT
ASSAM
781001

6:THE SUPERINTENDENT OF POLICE (B)
KAMRUP (M) DISTRICT
ASSAM
781001

7:THE OFFICER IN CHARGE
DISPUR POLICE STATION
KAMRUP (M) ASSA

Advocate for the Petitioner : MR. M ALI

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

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

ORDER

07.06.2023

(AM Bujor Barua, J)

Heard Mr. M Ali, learned counsel for the petitioner. Also heard Mr. N Haque, learned counsel for the petitioner. Also heard Mr. G Sarma, learned counsel for the respondents in the Home Department of Government of Assam as well as The Superintendant of Police (B) and for the Officer-in-Charge, Dispur Police Station, Ms. L Devi, learned CGC appearing for the respondents in the Union of India. Ms. U Das learned counsel appearing for the Deputy Commissioner, Kamrup, and Mr. AI Ali, learned counsel for the respondents in the Election Commission of India.

2. The petitioner Nur Uddin had been referred to the Foreigner Tribunal No. 2, Kamrup (M) at Guwahati 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. 16223/2015 wherein the Tribunal rendered an opinion dated 18.11.2018 had been 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 1959 of village Kaimbhasani Part-II, which contains the name of Foyej Sheik son of Umar Ali at Sl. No. 537 and Nijam Uddin Sheikh son of Foyej at Sl. No. 538. Further reference is made to the voters' list of 1966 and 1970 of village Nayer Alga, which contain the names of Foyej Uddin Bepari and Nijam Uddin Sheikh. Thereupon, reference is made to the voters' list of 1966 and 1970 of village Kaimbhasani Part-II, which again contains the name Md. Nijam Uddin son of Foyej Bepari at Sl. No. 152, and the voters' list of 1989 of village Kaimbhasani Part-II, contains the name of Nijam Uddin Sheikh son of Fayaj at Sl. No. 473 and that of Barek son of Nijam at Sl. No. 477. It is claimed that Foyek Sheikh of the 1959 voters' list of village Kaimbhasani Part-II, in between shifted to Nayer Alga, resulting in the situation that their names appeared in the voters' list of 1966 and 1970 of village Nayer Alga and thereafter, returned back to village Kaimbhasani Part-II, in order that their names now again appear in the voters' list of 1979, 1989 of village Kaimbhasani Part-II.

4. We have no material before us to either accept or reject the said contention that for the voters' list of 1966 and 1970 the family of Foyej Uddin that Nijam Uddin had shifted to village Nayer Alga to again return back to village Kaimbhasani to enable the names appears in the voters' list of 1979. But, however, if the stand taken by the petitioner is true, there would be a continuity that Barek son of Nizam of the 1989 voters' list of the village Kaimbhasani Part-II with that of Nizam Uddin Sheikh of the voters' list of 1959 of village

Kaimbhasani and therefore had discharged the burden that Barek himself is a citizen.

5. As further reliance is placed on the birth certificate issued by the Health Department, Govt. of Assam, which contains the information that Nur Uddin is the son of Abdul Barik of village Kaimbhasani Part-II, a question would remain is to whether Abdul Barik referred in the Birth Certificate and Barek referred in the voters' list of 1989 of the village Kaimbhasani Part-II are one and the same person.

6. For the purpose, we remand it back to the Tribunal to examine the aforesaid voters' list and also arrive at the conclusion whether the family of Foyej Uddin Sheikh and the Nizam Uddin Sheikh, had in between, shifted to village Nayer Alga to enable the names appear in the voters' list of 1966 and 1970 of the same village and thereafter, returned back to the village Kaimbhasani Part-II in order that their names appear in the voters' list of village Kaimbhasani Part-II. Secondly, a determination would also be required as to whether Abdul Barik referred in the Birth Certificate and Barek of the voters' list of 1989 of village Kaimbhasani are one and the same person and upon doing the needful, the Tribunal shall pass a reasoned order thereon.

7. 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.

8. 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.

9. The writ petition is allowed as indicated above.

10. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant