

GAHC010185462019



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

Case No. : WP(C)/5819/2019

SIRAJ

S/O- ALAL UDDIN @ ALAL HUSSAIN, R/O. VILL. KUMARGAON, P.S.
RUPOHIHAT, DIST- NAGAON, ASSAM, PIN- 782125.

VERSUS

THE UNION OF INDIA AND 7 ORS.

REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI.

2:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA

REP. 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 3RD
NAGAON
DIST.- NAGAON
ASSAM
PIN- 782001.

6:THE DEPUTY COMMISSIONER
NAGAON
P.O. AND P.S.- NAGAON
DIST.- NAGAON
ASSAM
PIN- 782001.

7:THE SUPERINTENDENT OF POLICE (BORDER)
NAGAON
P.O. AND P.S.- NAGAON
DIST.- NAGAON
ASSAM
PIN- 782001.

8:THE OFFICER-IN-CHARGE OF RUPAHIHAT POLICE STATION
P.O. RUPAHIHAT
DIST.- NAGAON
ASSAM
PIN- 782125

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 NELSON SAILO

ORDER

Date : 13.06.2023
(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, 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. J. Payeng, learned

counsel for the respondents No. 2, 5, 7 and 8, being the authorities in the Home Department; Mr. T. Pegu, learned counsel for the respondent No. 3, being the Election Commission of India and Mr. N.K. Das, learned counsel for the respondent No. 6, being the Deputy Commissioner, Nagaon.

2. The petitioner Siraj was referred to the Foreigners' Tribunal No. 3, Nagaon for rendering an opinion as to whether he is a foreigner within its meaning as per the provisions of the Foreigners Act, 1946 and accordingly F.T. Case No. NFT(No.3)(D)839/2016 was registered. The Tribunal had rendered its opinion dated 27.12.2018 arriving at its conclusion that the petitioner is a foreigner as per the provisions of the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1971 of village Kumar Gaon, PS Rupahihat in the Nagaon district which contains the name of Alla Uddin son of Isab at Sl. No. 268. It is claimed that Alla Uddin is the father of the petitioner. The petitioner thereupon relies upon the voters' list of 1997 of village Kumar Gaon, PS Rupahihat in the Nagaon district which contains the name of Md. Alal Uddin son of Isab at Sl. No. 231 and that of Siraj son of Alal at Sl. No. 233 and both are shown to be residing the same house No. 90. It is claimed that Siraj of the voters' list of 1997 of village Kumar Gaon is the petitioner himself and as his name appears along with Alal Uddin in the same voters' list, the petitioner accordingly has discharged the burden under Section 9 of the Foreigners Act, 1946 that he is an Indian citizen.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 3, Nagaon to examine the aforesaid voters' lists of 1971 and 1997 of village Kumar Gaon, where the voters' list of 1997 contains the names of Alal Uddin and Siraj together and the name of Alla Uddin also appears in the voters'

list of 1971. The petitioner to produce the complete voters' lists from the year 1971 up to 1997 of village Kumar Gaon for examination of the Tribunal. The respondents in the Home Department through the Superintendent of Police(B), Nagaon may make their own verification as to whether Siraj of the voters' list of 1997 of village Kumar Gaon and the petitioner proceedee Siraj are one and the same person and thereafter submit a report before the Tribunal. The Tribunal to also look into the evidence rendered by DW2 Alal Hussain @ Alaluddin son of late Isab Ali.

5. 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 27.12.2018 in F.T. Case No. NFT(No.3) (D)839/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 17.07.2023. 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