

GAHC010186692018



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

**Case No. : WP(C)/5868/2018**

HAIDAR ALI  
S/O- LT KISMAT ALI, VILL- JAHIRPUR, P.S. CHHAYGAON, DIST- KAMRUP,  
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM  
MINISTRY OF HOME DEPTT.  
DISPUR  
GHY-6

3:THE DY. COMMISSIONER  
KAMRUP  
AMINGAON  
PIN- 781031

4:THE SUPERINTENDENT OF POLICE (B)  
KAMRUP  
AMINGAON  
PIN- 781031

5:ELECTION COMMISSION OF INDIA  
NEW DELHI- 1

6:THE STATE CO-ORDINATOR  
NRC  
ASSAM

BHANGAGARH  
GHY-

**Advocate for the Petitioner** : MR. A R SIKDAR

**Advocate for the Respondent** : ASSTT.S.G.I. (R1)

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

**ORDER**

**Date : 21.06.2023**  
*(AM Bujor Barua, J)*

Heard Mr. AR Sikdar, 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. M Dutta, learned counsel for the respondent no. 3 being the Deputy Commissioner, Kamrup and Mr. AI Ali, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Haidar Ali had been referred to the Foreigners' Tribunal No. 1, Kamrup for rendering for rendering an opinion as to whether he is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of GFT (R) Case No. 318/2017. The Tribunal rendered an opinion dated 15.06.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1961 of village Bhakuamari P.S. Chhaygaon Mouza Pub Chamaria in the Kamrup district

containing the names of Md. Kismat Ali S/O Taribullah at Sl. No. 105 and that of Hajera Khatun W/O Kismat at Sl. No. 106 and both are shown to be residing in the same house no. 20. Reliance is also placed on the voters' list of 1966 of village Bhakuamari containing the names of Kismat Ali S/O Tarifullah at Sl. No. 171 and that of Hajera Khatun W/O Kismat at Sl. No. 172 and both are shown to be residing in the same house no. 54. Further reference is made to the voters' list of 1970 of village Bhakuamari containing the names of Kismat Ali S/O Tarifullah at Sl. No. 169 and that of Hajera Khatun W/O Kismat at Sl. No. 170 where both of them are shown to be residing in the same house no. 54. Thereupon, reliance is placed upon the voters' list of 1985 of village Bhakuamari containing the names of Kismat Ali S/O Taribullah at Sl. No. 24 and Hajera Khatun W/O Kismat at Sl. No. 25 and Haidar Ali S/O Kismat at Sl. No. 26 where all of them are shown to be residing in the same house no. 85.

5. It is claimed that Haidar Ali of the 1985 voters' list of village Bhakuamari is the petitioner himself and as his name appears along with Kismat Ali and Hajera Khatun whereas the names of Kismat Ali and Hajera Khatun also appear in the voters' lists of 1961, 1966 and 1970 of village Bhakuamari and therefore, he has discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is a citizen.

6. It has been stated that the Tribunal has rejected the aforesaid voters' lists by providing a reason that in some voters' lists the name of the father of Kismat Ali is shown as Taribullah and in another it is shown as Tarifullah. The Tribunal is reminded that the Supreme Court in its judgment of *Sirajul Hoque v. State of Assam and others reported in (2019) 5 SCC 534* had clarified the said aspect that the minor differences in the spelling of the name should not be construed to be a reason to dismiss a claim by the State.

7. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' lists of 1961, 1966, 1970 and 1985 of village Bhakuamari. The respondents in the Home Department to also make their own enquiry as to whether Haidar Ali of the 1985 voters' list of village Bhakuamari and the writ petitioner proceedee Haidar Ali are one and the same person and thereafter, submit a report before the Tribunal. Upon doing the needful, a reasoned order be passed by the Tribunal.
8. The petitioner to appear before the Tribunal on 26.07.2023.
9. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 15.06.2018 passed in GFT (R) Case No. 318/2017 and if against, consequence under the law is applicable to the petitioner.
10. 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**