

GAHC010192272019



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

Case No. : WP(C)/5942/2019

NURUL ALI
S/O- LT SHUKUR ALI, R/O- VILL- HAHCHARA, P.S. BARPETA, DIST-
BARPETA, ASSAM, PIN- 781301

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

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

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
GHY
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL NO. 1ST BARPETA
ASSAM
DIST- BARPETA
ASSAM
PIN- 781301

6:THE DY. COMMISSIONER
BARPETA
P.O. AND P.S. BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

7:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND P.S. BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

8:THE OFFICER-IN-CHARGE
OF BARPETA P.S.
P.O. BARPETA
DIST- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

29.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi,

learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.4; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2, 5, 7 and 8; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.3 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.6.

2. The petitioner Nurul Ali had been referred to the Foreigners' Tribunal No.1st, Barpeta, for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of F.T. Case No.370/2016. The Tribunal rendered an opinion dated 06.06.2019 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies on the voters list of 1971 of village Hahchora, which contain the names of Sukur Ali S/o Sobod Ali at Sl.No.236 and that of Arifon Nessa W/o Sukur at Sl.No.237 and both are shown to be residing in the same house No.27. It is claimed that Sukur Ali of the 1971 voters list of village Hahchora is the father of the petitioner. To substantiate the same, the petitioner relies upon the voters list of 1985 of village Hahchora containing the names of Sukur Munchi S/o Sabad at Sl.No.69 and that of Nuru Miah S/o Sukur at Sl.No.73 and both are shown to be residing in the same house No.36. As the name of Sukur Munchi and Nuru Miah appeared in the same voters list, the petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 has been discharged. It is noticed that if Sukur Munchi S/o Sabad of the 1985 voters list and Sukur Ali S/o Sobod Ali of the 1971 voters list, both of village Hahchora are one and the same person, the petitioner may have discharged the burden provided that the petitioner Nurul Ali and Nuru Miah of the 1985 voters list are one and the same person.

4. In view of above, the matter is remanded back to the Tribunal to examine the

voters lists of 1971 and 1985 of village Hahchora and arrive at the conclusion that whether Sukur Munchi S/o Sabad of the 1985 voters list and Sukur Ali S/o Sobod Ali of the 1971 voters list, both of village Hahchora are one and the same person and thereupon pass a reasoned order. Whether Sukur Ali and Sukur Munchi are one and the same person and Nuru Miah and Nurul Ali are one and the same person, the respondent Home Department may make their own verification and submit a report to the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 06.06.2019 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 01.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.
6. Send back the LCR immediately.
7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant