

GAHC010198642017



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

Case No. : WP(C)/4098/2017

AMIR HUSSAIN
S/O. LT. OSMAN ALI, VILL. BALARCHAR PT-II, P.O. KIRTAN PARA, P.S.
MERERCHAR ABHAYAPURI , DIST. BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-1.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

3:THE DY. COMMISSIONER
BONGAIGAON

DIST. BONGAIGAON
ASSAM.

4:THE SUPERINTENDENT OF POLICE BONGAIGAON

DIST. BONGAIGAON
ASSAM.

5:THE OFFICER-IN-CHARGE OF MERERCHR ABHAYAPURI POLICE
STATION

DIST. BONGAIGAON

ASSAM

Advocate for the Petitioner : MR.E HUSSAIN

Advocate for the Respondent :

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

ORDER

10.05.2023

[A.M.Bujor Barua, J.]

Heard Mr. M.I. Hussain, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent no. 1; Ms. A. Verma, learned counsel for the respondent nos. 2, 4 and 5; and Ms. U. Das, learned counsel for the respondent no. 3.

2. The petitioner Amir Hussain had been referred to the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri 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 resulting in registration of BNGN FT Case No. 3307/07, wherein an opinion dated 11.05.2017 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the Voters' List of 1966 of village Balarchar Part-II, P.S. North Salmara presently in the Bongaigaon district, which contains the name of Osman Ali, son of Jaher Uddin at serial no. 21 and that of Aymona Khatun wife of Osman at serial no. 25. The petitioner also relies upon the Voters' List of 1985 of village Balarchar Part-II, which contains the name of Osman Goni, son of Jaher Akanda at serial no. 518 and that of Amena Khatun wife of Osman Goni at serial no. 519 and also that of Amir Hussain son of Osman Goni at serial no. 520. All are shown to be residing in the same house no. 40. Accordingly, the petitioner claims that the burden under section 9 of the Foreigners' Act 1946 had been discharged to prove that he is a citizen of India.

4. We have noticed that Voters' List of 1966 contains the name of Osman Ali son of

Jaher Uddin at serial no. 21 and that of Aymona Khatun wife of Osman at serial no. 25. But the Voters' List of 1985 of village Balarchar Part-II, which contains the name of Osman Goni and not of Osman Ali and he is shown to be son of Jaher Akanda and not of Jaher Uddin.

5. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri to enable the Home Department of Government of Assam to make verification as to whether Osman Ali of the Voters' List of 1966 and Osman Goni of the Voters' List of 1985 are one and the same person and also to make verification as to whether Jaher Uddin of the Voters' List of 1966 and Jaher Akanda of the Voters' List of 1985 are one and the same person. The Home Department to also make a verification as to whether Amir Hussain of the Voters' List of 1985 and the present preceedee of the petition are one and the same person. Upon doing the needful the report be submitted.

6. Upon undertaking the exercise, the Tribunal may pass a reasoned order and if the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 11.05.2017 passed in BNGN FT Case No. 3307/07 and if against, consequence under the law is applicable to the petitioner.

7. The petitioner to appear before the Tribunal on 19.06.2023.

8. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

9. Order to Ms. A. Verma, learned counsel for the respondent nos. 2, 4 and 5 for further communication in the authorities of the Home Department of Government of Assam.

JUDGE

JUDGE

Comparing Assistant