

GAHC010200752019



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

Case No. : WP(C)/6139/2019

NURUL ISLAM AND 4 ORS.
S/O- LT SURUJ ALI, RESIDING AT VILL- SHILPUKHURI, P.S. MIKIRBHITA,
DIST- MORIGAON, ASSAM, PIN- 782106

2: MAMINA KHATUN
D/O- LT CHANDU SHEIKH
W/O- NURUL ISLAM
RESIDING AT VILL- SHILPUKHURI
P.S. MIKIRBHITA
DIST- MORIGAON
ASSAM
PIN- 782106

3: REJABUL HAQUE
S/O- NURUL ISLAM
RESIDING AT VILL- SHILPUKHURI
P.S. MIKIRBHITA
DIST- MORIGAON
ASSAM
PIN- 782106

4: BUL BUL HAQUE
S/O- NURUL ISLAM
RESIDING AT VILL- SHILPUKHURI
P.S. MIKIRBHITA
DIST- MORIGAON
ASSAM
PIN- 782106

5: MINARA BEGUM
D/O- NURUL ISLAM
W/O- MD. SALAM
VILL- AZAD NAGAR
P.S. MIKIRBHITA
DIST- MORIGAON
ASSAM
PIN- 78200

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-1

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

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

4:THE ASSAM CO-ORDINATOR OF NRC
BHANGAGARH
ASSAM
GHY-5

5:THE DY. COMMISSIONER
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782105

6:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782105

7:THE OFFICER-IN-CHARGE

MIKIRBHITA P.S.
DIST- MORIGAON
ASSAM
PIN- 78210

Advocate for the Petitioner : MR. M U MAHMUD

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

21.08.2023

(A.M. Bujor Barua, J)

Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC appearing on behalf of respondents in the Union of India and the authorities under the NRC being the respondent Nos.1 & 4, Mr. H. K. Hazarika, learned Government Advocate for the State respondents being the respondent No.5, Mr. G. Sarma, learned standing counsel representing the respondents Nos. 3, 6 & 7, being the Foreigner Tribunal, and Mr. A. Ali, learned counsel for the Election Commission of India being respondent No.2.

2. The petitioners, namely, (i) Nurul Islam, (ii) Mamina Khatun (wife of petitioner No.1), (iii) Rejabul Haque (son), Bul Bul Haque (Son) and (v) Minara Begum (daughter) have been referred to the Foreigners' Tribunal No-3, Morigaon for rendering an opinion as to whether they are persons who entered

the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of F. T. Case No. 29/2016. The Tribunal rendered an opinion dated 27.02.2019 declaring the petitioners to be foreigners. Being aggrieved this Writ Petition is instituted.

3. In the Writ Proceeding, the petitioner relies on the voters list of 1965 of village Shilpukhuri, Police Station Laharighat, in the Nagaon District, which contains the name of Suruj, son of Rajdar at Sl. No.223 and that of Rajdar Sk, son of Nabu Sk at Sl. No.220 and both are shown to be residing in the same House No.58. The voters list of the year 1966 of Village Shilpukhuri also contains the same information. The voters list of 1989 of Village Shilpukhuri contains the name of Nurul Islam son of Suruj at Sl. No. 172.

4. It is noticed that the voters list of 1965 contains the name of Suruj son of Rajdar at Sl. No.223 and that of Morjaan, wife of Suruj at Sl. No. 225. The voters list of 1989 of Village Shilpukhuri contains the name of Moiram Jaan wife of Suruj at Sl. No.171 and that of Nurul Islam the son of Suruj at Sl. No.172 and both are shown to be residing in the same House No.63. As the name of Nurul Islam son of Suruj appeared along with Moiram Jaan wife of Suruj in the voters list of 1969 of Village Shilpukhuri and the name of Morjaan wife of Suruj appeared along with Suruj in the voters list of 1965, where it is claimed that Moiram Jaan and Morjaan are in fact the same person, accordingly it is claimed that the burden under Section 9 of the Foreigners Act, 1946 had been discharged.

5. We take note that Morjaan, wife of Suruj in the voters list of 1965 is aged about 25 years, whereas the Moiram Jaan wife of Suruj in the voters list of 1989 is about 54 years, which shows that they are at a close proximity to each other.

6. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966, 1970, 1977, 1985 and 1989 of Village Shilpukhuri and arrive at a conclusion as to whether the appearance of the name of Nurul Islam along with Moiram Jaan in voters list of 1989 and that of Morjaan, wife of Suruj and Suruj appearing together in the voters list of 1965 do establish that the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946. The respondent's in the Home Department may further make their own verification and submit a report before the Tribunal more particularly the name of Nurul Islam of the voters list of 1989 and the writ petitioner is one and the same person. Upon doing the needful a reasoned order be passed. In the event, the reasoned order is in favour of the petitioners, the same shall prevail over the earlier opinion dated 27.02.2019 and if it is against the petitioners, consequential action shall follow.

7. As regards to the declaration of the other petitioners namely- 1) Musstt. Momina Khatoon (wife), 2) Md. Abdul Ahab (son), 3) Md. Bul Bul Haque (Son), and 4) Musstt. Minara Begum @ Begum (daughter), we are of the view that it is always safer to have individual references, although, there may be a claim that they are members of same family because the fact whether they are members of same family also requires a determination. Accordingly, the declarations

against the said persons are also interfered and liberty is granted to the respondent to initiate independent references against the said persons, if so advised.

8. The petitioners shall accordingly appear before the Tribunal on 19.09.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioners.

9. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant