

GAHC010201832019



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

Case No. : WP(C)/6505/2019

JULHAS MIYA
S/O- LATE SABER ALI, R/O- VILL- JAYPUR, P.O AND P.S- HOWLI, DIST-
BARPETA, ASSAM, PIN- 781316

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME AND POLITICAL DEPTT
DISPUR
GUWAHATI- 781006

3:THE DEPUTY COMMISSIONER
BARPETA
P.O BARPETA
DIST- BARPETA
ASSAM
PIN- 781316

4:THE SUPERINTENDENT OF POLICE (B)
P.O BARPETA
DIST- BARPETA
ASSAM
PIN- 781316

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI- 01

6:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GHY- 78100

Advocate for the Petitioner : S ALI

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

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

ORDER

Date : 16.05.2023
(A.M. Bujor Barua, J)

Heard Mr. S. Hussain, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India.

2. The petitioner Julhas Miya was referred to the Foreigners' Tribunal No. 10, Barpeta for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and F.T. Case No. 5/2016 was registered. The Tribunal rendered its opinion dated 08.02.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of

village Dabaliapara, P.S. Barpeta in the present Barpeta district which contains the name of Saber Ali son of Ali Sheikh at Sl. No. 572 and that of Moyzan Nessa wife of Saber Ali at Sl. No. 573 and both are shown to be residing in the same house No. 171. It is claimed that Saber Ali son of Ali Sheikh is the father of the petitioner and that Moyzan Nessa is the mother of the petitioner. To substantiate the same, reliance is placed upon the voters' list of 1997 also of village Dabaliapara, P.S. Barpeta in the Barpeta district which contains the names of Saber Ali son of Ali at Sl. No. 304, Moyjan Nessa wife of Saber at Sl. No. 305 and Julhas Miya son of Saber at Sl. No. 308 and all of them are shown to be residing in the same house No. 275.

4. As the names of Julhas Miya son of Saber and Saber Ali son of Ali appear in the same voters' list of 1997 of village Dabaliapara and both are shown to be residing in the same house number and the name of Saber Ali son of Ali Sheikh appears in the voters' list of 1966 of the same village, the petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 had been discharged that he is a citizen of India.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 10, Barpeta to examine the voters' lists of 1966 and 1997 of village Dabaliapara which contain information as indicated above. The petitioner to also produce all the intervening voters' lists of village Dabaliapara from the year 1966 up to 1997 for examination of the Tribunal. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Barpeta may also make their own verification as to whether the petitioner Julhas Miya and Julhas Miya of the voters' list of 1997 of village Dabaliapara are one and the same person and submit the report before the Tribunal.

6. 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 08.02.2018 in F.T. Case No. 5/2016 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 30.06.2023. 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