

GAHC010206892018



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

Case No. : WP(C)/6528/2018

SAGAR ALI
S/O. LATE BADAR UDDIN, RESIDENT OF VILLAGE- NALIRPAM, P.S.
SARTHEBARI, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, 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 DEPUTY COMMISSIONER
KAMRUP(M)
ASSAM
GUWAHATI-36

4:THE DEPUTY COMMISSIONER OF POLICE (B)
GUWAHATI
ASSAM

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI
TO BE REPRESENTED BY CHIEF ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION
ASSAM

BHANGAGARH
LACHIT NAGAR
GUWAHATI-5

Advocate for the Petitioner : DR. B AHMED

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

07.06.2023

(AM Bujor Barua, J)

Heard Mr. N Haque, learned counsel for the petitioner. Also heard Mr. G Sarma, learned counsel for the respondents in the Home Department of Government of Assam as well as The Superintendant of Police (B), Ms. L Devi, learned CGC appearing for the respondents in the Union of India. Ms. U Das learned counsel appearing for the Deputy Commissioner, Kamrup, and Mr. AI Ali, learned counsel for the respondents in the Election Commission of India.

2. The petitioner Sagar Ali had been referred to the Foreigner Tribunal No. 2, Kamrup (M) for rendering 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 the Registration of FT Case No. 373/2017 wherein the Tribunal rendered an opinion dated 01.09.2018 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1965 of village Nalirpam P.S Barpeta, in the present Barpeta district, which contains the

name of Badar Uddin son of Tenu Mia at Sl. No. 294 and Sobiran Nessa wife of Badar at Sl. No. 295 where both are shown to be residing in the House No. 66. It is claimed that Badar Uddin of the voters' list is the father of the petitioner. Similar information is also available in the voters' list of 1970 of village Nalirpam as regards the name of Badar Uddin. Further reliance is placed on a voters' list of 1997 of village Nalirpam which contains the name of Sagar Ali son of Badar Uddin at Sl. No. 1083. It is claimed that Sagar Ali of the 1997 voters' list of village Nalirpam is the petitioner himself and accordingly, the burden under Section 9 of the Foreigners Act 1946 has been discharged to prove that he is a citizen of India.

4. Considering the consistency in the contents of the voters' list of 1965, 1970 & 1997 of village Nalirpam, we remand it back to the Tribunal to examine the aforesaid three voters' lists but for an effective adjudication, the petitioner also to produce the complete voters' list of village Nalirpam from 1965 up to 1997 for examination of the Tribunal. The respondents in the Home Department may make their own verification as well as on the question whether Sagar Ali of the 1997 voters' list of village Nalirpam and a writ petitioner Sagar Ali are one and the same person and upon doing the needful, the Tribunal shall pass a reasoned order thereon.

5. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 27.12.2018 and if it goes against the petitioner, consequence as per law shall follow.

6. The petitioner shall appear before the concerned Foreigners Tribunal on 11.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

7. The writ petition is allowed as indicated above.
8. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant