

GAHC010224702019



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

Case No. : WP(C)/6931/2019

HAREJ ALI @ HAREJ
S/O- LT OMAR ALI, R/O- VILL- BARUATING, P.S. BHURAGAON, DIST-
MORIGAON, ASSAM, PIN- 782121

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN ASHOKA ROAD
NEW DELHI

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

4:THE NATIONAL REGISTER OF CITIZENS
REP. BY THE STATE COORDINATOR
ACHYUT PLAZA
BHANGAGARH
GHY-5
DIST- KAMRUP (M)
ASSAM

5:THE DY. COMMISSIONER
MORIGAON
DIST- MORIGAON

ASSAM
PIN- 782105

6:THE MEMBER
FOREIGNER TRIBUNAL 2ND
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782105

7:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
P.O. AND P.S. MORIGAON
DIST- MORIGAON
ASSAM
PIN- 78210

Advocate for the Petitioner : MR. A PAUL

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

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

ORDER

Date : 25.08.2023
(AM Bujor Barua, J)

Heard Mr. A Paul, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. T Pegu, learned counsel for the respondent no. 2 being the authorities under the Election Commission of India, Mr. G Sarma, learned counsel for the respondents no. 3, 6 and 7 being the authorities under the Home Department of Government of Assam and Mr. P Sarma, learned Additional Senior Government Advocate for the respondent no. 5 being the Deputy Commissioner, Morigaon.

2. The petitioner Harej Ali was referred to the Foreigners' Tribunal No. 2, Morigaon for rendering an opinion as to whether he is a foreigner under the Foreigners' Act, 1946 resulting in registration of Case No. F.T.(C) 377/2011. The Tribunal rendered an opinion dated 26.06.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon a voters' list of 1966 of village Baruahting Police Station Laharighat in the Nagaon district which contains the name of Omar Ali S/O Haran at Sl. No. 162. It is claimed that Omar Ali is the father of the petitioner. To substantiate that Omar Ali is the father of the petitioner, reliance is placed on the voters' list of 1997 of village Baruahting which contains the names of Omar Ali S/O Haran at Sl. No. 237 and that of Harej S/O Omar at Sl. No. 248 where both are residing in the same house no. 33.

5. As Omar Ali and Harej are residing in the same house number and their names appear in the voters' list of 1997 of village Baruahting and the name of Omar Ali appears in the voters' of 1966 of village Baruahting, a claim is made that the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

6. In view of the above the matter stands remanded back to the Tribunal to examine the voters' lists of village Baruahting of all the years from 1966 to 1997 and pass a reasoned order. For the purpose, the petitioner to produce complete and continuous voters' lists of village Baruahting from the year 1966 to 1997 for examination of the Tribunal. The respondents in the Home Department may make their own enquiry and verification and thereafter, submit a report before

the Tribunal for its examination. Upon doing the needful, the Tribunal to pass a reasoned order.

7. The petitioner to appear before the Tribunal on 22.09.2023.

8. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 26.06.2019 passed in Case No. F.T.(C) 377/2011 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant