

GAHC010226342018



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

Case No. : WP(C)/335/2019

HAZARAT ALI
S/O- LATE IUCHOB ALI, PERMANENT RESIDENT OF VILL- TENGAGURI,
KACHARIGAON, P.S. LAHARIGHAT, DIST. MORIGAON, ASSAM.
PRESENTLY RESIDING AT LANKAPATTY LANKA WARD NO. 3, P.O. AND P.S.
LANKA, DIST.- HOJAI, ASSAM, PIN- 782442.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG,
NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER OF HOJAI
P.O.
P.S. AND DIST.- HOJAI
ASSAM
PIN- 782435.

4:THE SUPERINTENDENT OF POLICE (B)
HOJAI
P.O.
P.S. AND DIST.- HOJAI
ASSAM
PIN- 782435.

5:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI-1.

6:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

Date : 18.07.2023
(AM Bujor Barua, J)

Heard Mr. AH Alamgir, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondent no. 1 and 6 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of Government of Assam, Ms. U Das, learned counsel for the respondent no. 3 being the Deputy Commissioner, Hojai and Mr. AI Ali, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Hazarat Ali had been referred to the Foreigners' Tribunal No. 7, Nagaon at Lanka for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T./L/Case No.

1455/2017. The Tribunal rendered an opinion dated 26.07.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding, in order to verify the claim made by the petitioner based upon the voters' lists of 1966, 1970, 1977, 1979, 1985 and 1989 of village Tenga Kochari Gaon Police Station Laharighat in the Nagaon district, we required the Election Commission to produce the complete voters' lists of the aforesaid years in respect of the said village. Accordingly, the complete voters' lists have been produced before the Court.

5. The petitioner relies upon the voters' list of 1966 of village Tenga Kochari Gaon which contains the name of Esob Ali S/O Ashrab at Sl. No. 76 and it is claimed that Esob Ali is the father of the petitioner. Further reliance is placed on the voters' list of 1970 of village Tenga Kochari Gaon which again contains the name of Esob Ali S/O Ashrab at Sl. No. 67 and the voters' list of 1977 of village Tenga Kochari Gaon which contains the names of Esob Ali S/O Ashraf at Sl. No. 284 and that of Amirjan W/O Esob at Sl. No. 285 which information is also available in the voters' list of 1979 of village Tenga Kochari Gaon. Reliance is also placed on the voters' list of 1989 of village Tenga Kochari Gaon which contains the names of Amirjan W/O Esob Ali at Sl. No. 55 and that of Hazarat Ali S/O Esob Ali at Sl. No. 58 and both are shown to be residing in the same house no. 8.

6. The petitioner accordingly claims that as his name appears along with Amirjan W/O Esob in the voters' list of 1989 of village Tenga Kochari Gaon and the name of Amirjan appears along with Esob Ali in the voters' list of 1977 and 1979 of village Tenga Kochari Gaon whereas the name of Esob Ali appears in

the voters' list of 1966, 1970 of the same village Tenga Kochari Gaon, the burden under Section 9 of the Foreigners Act, 1946 has been discharged by the petitioner.

7. In view of the above, the matter stands remanded back to the Tribunal to examine the complete voters' lists from the year 1966, 1970, 1977, 1979 and 1989 of village Tenga Kochari Gaon and pass a reasoned order thereon. The respondents in the Home Department may make their own enquiry and verification and thereafter, submit a report before the Tribunal, if so advised. Upon doing the needful, a reasoned order be passed by the Tribunal.

8. The complete voters' lists produced before the Court is kept on record.

9. The petitioner to appear before the Tribunal on 11.08.2023.

10. If the order of the Tribunal is in favour of the petitioner, the same shall prevail over the opinion dated 26.07.2018 passed in F.T./L/Case No. 1455/2017 and if against, consequence under the law is applicable to the petitioner.

11. 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