

GAHC010232322018



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

Case No. : WP(C)/7381/2018

ISMAIL HUSSAIN KHANDAKAR
S/O- AMJAD ALI KHANDAKAR, R/O- VILL- KAIM BHASHANI AM KHANDA,
P.S- DHUBRI, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 9 ORS
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, GOVT OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GHY- 06

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005

5:THE DEPUTY COMMISSIONER
DHUBRI
P.O- AND P.S- DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

6:THE FOREIGNERS TRIBUNAL NO. 2
KAMRUP(M) AT GUWAHATI
HEDAYATPUR
GHY- 03
DIST- KAMRUP(M)
ASSAM

7:THE DEPUTY COMMISSIONER OF POLICE(B)
CITY GUWAHATI
KAMRUP(M)
ASSAM
PIN- 781001

8:THE SR SUPERINTENDENT OF POLICE(B)
CITY GUWAHATI
KAMRUP(M)
ASSAM
PIN- 781001

9:THE SUPERINTENDENT OF POLICE(B)
DHUBRI
P.O AND P.S- DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

10:THE OFFICER IN CHARGE
DHUBRI POLICE STATION
P.O- DHUBRI DIST- DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

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

ORDER

Date : 20.03.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. P Swargiary, learned counsel for the respondent no. 1 being the Union of India, Ms. A Verma, learned counsel for the respondents no. 2, 6, 7, 8, 9 and 10 being the authorities under the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 3 being the Election Commission of India, Ms. L Devi, learned counsel for the respondent no. 4 being the authorities under the NRC and Ms. K Phukan, learned counsel for the respondent no. 5 being the Deputy Commissioner, Dhubri.

2. The petitioner Ismail Hussain had been referred to the Foreigners Tribunal No. 2, Kamrup(M) for rendering an 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 registration of Case No. 571/2015. The Tribunal rendered an opinion dated 30.08.2018 declaring the petitioner to be foreigner.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village 171 Bhedlo Mouza Dhubri in the Dhubri district which contains the name of Daulat Khandakar, S/O Ajatullah at Sl. No. 139 and that of Nabijon Bibi, W/O Daulat at Sl. No. 140. The petitioner also refers to the voters' list of 1985 of village 188 Kaimbhasani Part I which contains the name of Nabijon Bibi, W/O Daulat Khandakar at Sl. No. 351 and that of Amjad Ali, S/O Daulat Khandakar at Sl. No. 352. The petitioner further refers to the voters' list of 2017 of village 178

Kaimbhasani Pt I which contains the name of Amjad Adli Khandakar, S/O Dulat Khandakar at Sl. No. 774 and that of Ismail Hussain Khandakar, S/O Amjad Ali Khandakar at Sl. No. 777.

5. The petitioner also seeks to establish his link with Daulat Khandakar of the 1966 voters' list by referring to the final Khatian No. 47 in respect of the plot of land of Kaimbhasani Pt I village. According to the petitioner although Daulat Khandakar was initially residing at village Bhedlo but he is also the owner of the plot of land at village Kaimbhasani Pt I where after his death his wife along with his son Amjad Ali Khandakar had shifted and accordingly their names appears in the voters' list of Kaimbhasani village Pt I of the year 1985. The name of the petitioner appears along with Amjad Ali Khandakar in the voters' list of 2017 in respect of village Kaimbhasani Pt I. Accordingly, the petitioner claims that he has established that he is a citizen of India.

6. In order to accept that the petitioner is a citizen of India there has to be conclusion that Daulat Khandakar of 1966 voters' list of village Bhedlo and Daulat Khandakar being the father of Amjad Ali in the voters' list of 1985 of village Kaimbhasani Part I are one and the same person. An indication may be that the name of Nabijon Bibi wife of Daulat Khandakar of 1966 appears in the voters' list of village Bhedlo and the name of Nabijon Bibi, W/O Daulat Khandakar also appears along with name of Amjad Ali Khandakar, S/O Daulat Khandakar in the voters' list of 1985 of village Kaimbhasani.

7. The Tribunal may examine the matter and pass a reasoned order and if the reasoned order is in favour of the petitioner, the same may prevail over the opinion/order dated 30.08.2018 passed in F.T. Case No. 571/2015 and if against, consequence under the law is applicable to the petitioner. The petitioner to appear before the Tribunal on 03.05.2023.

8. The petitioner is given the liberty to produce any further material, if available to substantiate the aforesaid linkage.
9. Till the reasoned order is passed, no coercive action be taken against the petitioner.
10. Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant