

GAHC010232382018



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

Case No. : WP(C)/7269/2018

JASHMAT ALI
S/O- AMIR UDDIN @ AMIR, R/O- VILL- BALIKURI, P.S. KALGACHIA
(PREVIOUSLY BAGHBAR), DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
TO BE REP. BY THE SECY., GOVT. OF INDIA, DEPTT. OF HOME AFFAIRS,
NEW DELHI-1

2:THE STATE OF ASSAM
TO BE REP. BY THE SECY. TO THE GOVT OF ASSAM
DEPTT. OF HOME
DISPUR
GHY-6

3:THE SUPERINTENDENT OF POLICE (B)
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

4:THE DY. COMMISSIONER
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE NRC COORDINATOR

NATIONAL REGISTER OF CITIZEN (NRC)
ASSAM
BHANGAGARH
GHY-

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 : 19.07.2023

(A.M. Bujor Barua, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Mr. B. Sarma, learned counsel for the respondent No. 1, being the Union of India. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 3, being the authorities in the Home Department; Mr. P.K. Medhi, learned counsel for the respondent No. 4, being the Deputy Commissioner, Barpeta; Mr. A.I. Ali, learned counsel for the respondent No. 5, being the authorities in the Election Commission of India and Ms. L. Devi, learned counsel for the respondent No. 6, being the State Co-ordinator of NRC.

2. The petitioner Jashmat Ali was referred to the Foreigners' Tribunal No. 5, Barpeta for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 and accordingly Case No. FT(5th) 656/16 was registered. The Tribunal had rendered its opinion dated 14.09.2018 arriving at its conclusion that the petitioner is a foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

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

village Balikuri Nonke, Mouza Jania in the Kamrup district which contains the name of Amir Uddin son of Javed at Sl. No. 1633. It is claimed that Amir Uddin is the father of the petitioner. The petitioner also relies upon the voters' list of 1970 of village Balikuri Nonke, Mouza Jania in the Kamrup district which contains the names of Amir Uddin son of Javed at Sl. No. 1932 and Sabiran Nessa wife of Amir Uddin at Sl. No. 1936 and both are shown to be residing in the same house No. 591. It is claimed that Sabiran Nessa is the mother of the petitioner. The petitioner further relies upon the voters' list of 1997 of village Balikuri Nonke, Mouza Jania in the Barpeta district which contains the names of Amir Uddin son of Javed at Sl. No. 298, Sabia Khatun wife of Amir at Sl. No. 299 and Jashmat Ali son of Amir at Sl. No. 304 and all of them are shown to be residing in the same house No. 778. As the name of Jashmat Ali appears along with Sabia Khatun and Amir Uddin in the voters' list of 1997 where the name of Sabiran Nessa appears in the voters' list of 1970 along with Amir Uddin and the name of Amir Uddin appears in the voters' list of 1966, all of the same village Balikuri Nonke, it is claimed that the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 5, Barpeta to examine the aforesaid voters' lists of 1966, 1970 and 1997 of village Balikuri Nonke. The petitioner to produce the complete voters' lists from the year 1966 up to 1997 of village Balikuri Nonke for examination of the Tribunal. The State respondents in the Home Department may make their own verification as to whether the writ petitioner Jashmat Ali and Jashmat Ali of the voters' list of 1997 of village Balikuri Nonke are one and the same person and thereafter submit a report before the Tribunal.

5. 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 14.09.2018 in Case No. FT(5th) 656/16 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 14.08.2023. 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