

GAHC010244222022



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

Case No. : WP(C)/7811/2022

JAYAN UDDIN @ JAYALUDDIN
S/O LATE RAHUMUDDIN, R/O VILL-126 NO. UZIRAR CHAR, P.S.-
PANCHARATNA, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA, SHASTRI BHAWAN, NEW DELHI-110001

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

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

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN-781005

5:THE DEPUTY COMMISSIONER
GOALPARA
P.O.-BALADMARI
DIST-GOALPARA
ASSAM
PIN-783121

6:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
DIST-GOALPARA
ASSAM
PIN-7831211

7:THE OFFICER-IN-CHARGE OF PANCHARATNA POLICE STATION
P.O.-PANCHARATNA
DIST-GOALPARA
ASSAM
PIN-78310

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

07.08.2023

[Achintya Malla Bujor Barua, J.]

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned counsel appearing for the respondent Nos.1 and 4; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2, 6 and 7; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.3 and Mr. P. Sarma, learned Government Advocate, appearing for respondent No.5.

2. The petitioner Jayan Uddin @ Jayaluddin had been referred to the Foreigners' Tribunal 8th, Goalpara, Assam for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 resulting in registration of F.T.(8) Case No.879/2018. The Tribunal rendered an opinion dated 17.11.2021 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding reliance is placed on the voters list of 1966 of village Moukhuwa Char in the Barpeta district, which contains the names of Rahimuddin S/o Khowaj at Sl.No.536 and that of Jayna Khatun W/o Rahimuddin at Sl.No.537. It is claimed that Rahimuddin of the 1966 voters list is the father of the petitioner. To substantiate the same evidence had been rendered by Abdul Jalil S/o Khowaj of Moukhuwa village as DW-2 wherein he had rendered evidence that the petitioner Jayan Uddin is the son of Rahimuddin of the 1966 voters list. To establish as to whether Abdul Jalil satisfies the requirement of Section 50 of the Indian Evidence Act, reliance is placed on the voters list of 1985 of village Moukhuwa Char, which contains the names of Rahim Uddin S/o Khowaj at Sl. No.344 and that of Abdul Jalil S/o Khowaj at Sl.No.355 and also that of Jayan Uddin S/o Rahim at Sl.No.347. The voters list of 1966 to establish the relationship between Rahimuddin and Abdul Jalil inasmuch as both are sons of Khowaj and on such point of view the evidence rendered by Abdul Jalil as DW-2 may satisfy the requirement of Section 50 of the Indian Evidence Act that Abdul Jalil may have the special means of knowledge about the relationship between Rahimuddin and that of the petitioner Jayan Uddin.

4. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966 and 1985 and also the in between voters lists of village Moukhuwa Char as well as the evidence rendered by Abdul Jalil as DW-2. The respondents in the Home Department may further cross-examine Abdul Jalil as well as make their own verification as to whether Jayan Uddin of the 1985 voters list of village Moukhuwa Char and Jayan Uddin, the writ petitioner are one and the same person and submit a report before the Tribunal. It is stated that Abdul Jalil would be presently

aged about more than 80 years and so it may be difficult for him to proceed to the Foreigners Tribunal 8th at Goalpara. If it is so and the respondents in the Home Department intends to further cross-examine Abdul Jalil, they may do the same by making a requisition to have the cross-examination done on commission before any appropriate forum in the Barpeta district. Upon doing the needful a reasoned order be passed. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 17.11.2021 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 01.09.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.
6. Send back the LCR immediately.
7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant