

GAHC010255172022



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

Case No. : WP(C)/8058/2022

MD. ABDUL MALIK @ ABDUL MALIK KHAN
S/O- LATE ABDUL SATTAR,
PERMANENT R/O- PATHARKANDI ROAD, KARIMGANJ TOWN, P.O-
KARIMGANJ, P.S AND DIST- KARIMGANJ, ASSAM

VERSUS

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

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

3:THE SUPERINTENDENT OF POLICE
P.O
P.S AND DIST- SIVASAGAR
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
JORHAT

P.O
P.S AND DIST- JORHAT
ASSAM

5:THE DEPUTY COMMISSIONER
JORHAT

P.O
P.S AND DIST- JORHAT
ASSAM

6:THE NATIONAL REGISTER OF CITIZENS
REP. BY THE COORDINATOR
ACHYUT PLAZA
BHARALUPUR
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)
ASSAM

7:THE ELECTION COMMISSIONER OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
ASHOKA ROAD
NEW DELHI-11000

Advocate for the Petitioner : MR. S NATH

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

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

ORDER

02.08.2023

[A.M.Bujor Barua, J.]

Heard Mr. S. Nath, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned counsel for the Home Department; Mr. L. Devi, learned counsel for the NRC and UoI; Ms. K. Phukan, learned counsel for the DC; and Mr. A.I. Ali, learned counsel for the ECI.

2. The petitioner Md. Abdul Malik @ Abdul Malik Khan had been referred to the Foreigners' Tribunal, Jorhat for rendering an opinion as to whether he is a foreigner under the Foreigners' Act, 1946 resulting in registration of F.T. (New) Case No. 755/2010 and F.T. (Old) Case No.

F.T./SVR/755/2010, wherein an opinion dated 30.09.2022 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the Voters' List of 1970 of Karimganj Municipality Ward no. 26 in the Cachar district, which contains the name of Abdul Sattar, son of Samed Ali at serial no. 41. It is claimed that Abdul Sattar is the father of the petitioner. To substantiate the same further reliance is made upon the Voters' List of 1985 of Karimganj Municipality Ward no. 26 in the Cachar district, which contains the name of Abdul Sattar, son of Samed Ali at serial no. 769 and that of Abdul Malik, son of Abdul Sattar at serial no. 772. As the name of Abdul Malik appears along with Abdul Sattar in the Voters' List of 1985 of Karimganj Municipality Ward no. 26 in the Cachar district and the name of Abdul Sattar appears in the Voters' List of 1970 of Karimganj Municipality Ward no. 26 in the Cachar district, it is claimed that the burden under Section 9 of the Foreigners' Act, 1946 had been discharged by the petitioner.

4. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, Jorhat to examine the Voters' Lists of 1966 - 1997 of Karimganj Municipality Ward no. 26 in the Cachar district, more particularly whether the name of Abdul Sattar also appears in the Voters' List of 1966 of Karimganj Municipality Ward no. 26 in the Cachar district so as to determine as to whether Abdul Sattar himself is a citizen or not. The Home Department also to make their own verification and submit the report before the Tribunal.

5. Upon doing the needful the Tribunal may 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 30.09.2022 in F.T. (New) Case No.

755/2010 and F.T. (Old) Case No. F.T./SVR/755/2010 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 28.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant