

GAHC010258002022



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

Case No. : WP(C)/8104/2022

FAYSOL AHMED CHOUDHURY
S/O- ABDUR RAHIM CHOUDHURY,
VILL- KHELMA PART VI,
P.O- GUMRA BAZAR, P.S- KATIGORAH, DIST- CACHAR, ASSAM

VERSUS

UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NORTH BLOCK, 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 DEPUTY COMMISSIONER
CACHAR
ASSAM

4:THE ELECTION COMMISSION OF INDIA
TO BE REP. BY THE DISTRICT ELECTION OFFICER
CACHAR
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
CACHAR
ASSAM

6:THE STATE COORDINATOR
OF NATIONAL REGISTER OF CITIZENS

ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M

Advocate for the Petitioner : MR. K MIRA

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

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 28.08.2023

(L.S.Jamir, J)

Heard Mr. K.Mira, learned counsel for the petitioner. Also heard Ms. L.Devi, learned CGC for the respondent Nos. 1 and 6; Mr. J.Payeng, learned standing counsel, FTC for the respondent Nos. 2 and 5; Mr. H.K.Hazarika, learned Govt. Advocate for the respondent No.3 and Mr. A.Ali, learned standing counsel, ECI for the respondent No.4.

2. The present petition has been filed by the petitioner/proceedee against the judgment and order dated 25.11.2020, passed by the Foreigners' Tribunal, 4th, Cachar, Silchar in the Case No. F.T. 4th /D/133/2019, whereby, the learned Tribunal has opined that the petitioner is a foreigner entering Assam on or after 21.03.1971 and Deputy Commissioner, Cachar, Silchar and the Superintendent of Police (B) Cachar, Silchar were directed to take steps in terms of the opinion.

3. It is the case of the proceedee that he has exhibited the voter list of 1965,

wherein, the name of his father Abdur Rahim Choudhury appeared at Sl. No. 242 under Village Khelma Part VII and also the voter list of 1975, wherein, the name of his father appeared at Sl. No.384 under village Khelma, part VII. The further case of the petitioner is that he has also exhibited the PRC Certificate issued by the Office of the Deputy Commissioner, Cachar in favour of his father namely, Abdur Rahim Choudhury against village Khelma Part VII. It is submitted that the petitioner has also exhibited the Admit Card issued by the Board of Secondary Education, Assam, wherein, the petitioner is shown to be the son of his father, namely, Sri Abdur Rahim Choudhury and also the periodic khiraj patta No. 191 dated 05.07.1965 in favour of his father Abdur Rahim Choudhury. It is therefore submitted that the linkage of the petitioner with his father namely, Abdur Rahim Choudhury was established. The other ground of the submission of the learned counsel for the petitioner is that the petitioner in his written statement before the learned Tribunal has stated that the proceedee's name has been recorded in the voter list of 1993 along with his father and mother at Sl. No.200 to 202, House Nos. 100, 101 Electoral Part Nos. 24 of Village Khelma Part VI. It was further stated that the certified copy of the same was applied for but it was informed that the voter list pertaining to the year 1993 was missing and therefore he having no alternative, had to annex a xerox copy of the voter list of 1993. On these grounds, the learned counsel for the petitioner submits that an opportunity may be given to the petitioner to produce the voter list of 1993 before the learned Tribunal and thereafter, establish his linkage with his father, namely, Abdur Rahim Choudhury to prove that the petitioner is a citizen of India and not a foreigner.

4. During the pendency of this writ petition, the Election Commission of India

was directed to furnish the voter list of 1993 of village Khelma part VI in the Cachar District. On 14.08.2023 when this matter was listed, the Election Commission produced the voter list of 1993 which was thereafter handed over to Mr. K.Mira, learned counsel for the petitioner on the same day. Thereafter, petitioner has filed an additional affidavit enclosing the voter list of 1993 with regard to village Khelma Part VII. A perusal of the same would indicate that the name of the petitioner's father appears at Sl. No.200 and the name of the petitioner appears at Sl. No.202 therein.

5. On a consideration of the judgment and order passed by the learned Tribunal in F.T. 4th /D/133/2019, we find that the voter list of 1993 was not considered. Therefore, in the interest of justice, we remand the matter back to the learned Foreigners Tribunal 4th, Cachar to reconsider the matter afresh, after giving an opportunity to the petitioner to exhibit the voter list of 1993. While considering the matter, it is noticed that in the reference made, the village of the petitioner is indicated as Khelma Part IV whereas, the voter list for the year 1965 and 1975 indicates Village Khelma Part VII and the PRC Certificate issued by the Office of the Deputy Commissioner, Cachar also indicates village Khelma Part VII. However, with regard to the 1993 voter list, it is indicated as village Khelma Part VI. This aspect may also be gone into by the learned Tribunal after giving an opportunity to the petitioner/proceedee.

6. In that view of the matter, the judgment and order dated 25.11.2020 passed by the Foreigners Tribunal 4th Cachar in case No. FT 4th /D/133/2019 is set aside and quashed.

The petitioner/proceedee shall appear before the Foreigners Tribunal 4th Cachar at Silchar on 29th of September, 2023.

Writ petition is accordingly disposed of.

Send down LCRs forthwith.

JUDGE

JUDGE

Comparing Assistant