

GAHC010260302017



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

Case No. : WP(C)/5343/2017

RUSTOM ALI
S/O LT. KISMOT ALI R/O VILL- TOPKARCHAR, P.O. TOPGAON P.S.
ABHAYAPURI, NOW MERERCHAR DIST. BONGAIGAON, ASSAM, PIN -
783384.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI.

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

3:THE DEPUTY COMMISSIONER

BONGAIGAON
P.O. and DIST. BONGAIGAON
ASSAM

4:THE SUPERINTENDENT OF POLICE

BORDER
BONGAIGAON
DIST. BONGAIGAON
ASSAM

5:THE OFFICER -IN-CHARGE

MERERCHAR POLICE STATION

PO. RANGAPANI DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR.D HUSSAIN

Advocate for the Respondent :

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

19.07.2023

(A.M. Bujor Barua, J)

Heard Mr. D Hussain, learned counsel for the petitioner. Also heard Mr. B Sarma, learned CGC appearing on behalf of respondents in the Union of India, Ms. L Devi learned counsel for the authorities in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Mr. PK Medhi, learned counsel for the Deputy Commissioner, Bongaigaon.

2. The petitioner Rustom Ali had been referred to the Foreigners Tribunal No. 2, Bongaigaon at Abhyapuri for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of BNGN/FT/Case No. 1558/2007, wherein an opinion dated 29.04.2017 was 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 1966 of village Tupkarchar in the present Bongaigaon district, which contains the name of Kismat Ali son of Kabil Sheikh at serial No. 184. It is claimed that Kismat Ali is

the father of the petitioner. Reliance is also made on the voters list of 1970 of village Tupkarchar, which contains the name of Kismat Ali son of Kabil Sheikh at serial No. 195 and Natiman Nessa wife of Kismat Ali at serial No. 196, where both of them are shown to be residing in the same house No. 62. Further reference is made to the voters list of 1979 of village Tupkarchar, which contains the name of Natiman Nessa wife of Kismat at serial No. 299 and Rustam Ali son of Kismat at serial No. 300, where both of them are shown to be residing in the same house No. 59.

4. As the name of Rustam Ali appears along with Natiman Nessa in the voters list of 1979, where the name of Natiman Nessa and Kismat Ali appears together in the voters list of 1970 and the name of Kismat Ali also appears in the voters list of 1966 all of the same village Tupkarchar, the petitioner claims that the burden under section 9 of the Foreigners Act, 1946 to prove his citizenship has been discharged.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1966, 1970 and 1979 of village Tupkarchar. The respondents in the Home Department may make their own verification and submit a report before the Tribunal more particularly, as to whether the writ petitioner proceedee Rustom Ali and Rustam Ali of the 1979 voters list of village Tupkarchar are one and the same person. The petitioner shall also produce the complete voters list of all subsequent years of village Tupkarchar from 1966 for examination of the Tribunal. After doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 29.04.2017 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 14.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.
8. The writ petition is allowed as indicated above.
9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant