

GAHC010261412018



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

Case No. : WP(C)/8157/2018

AYUB ALI
S/O- LT ASKAR ALI, VILL- HATILARUA, P.O. TENGAGURI, P.S.
BHURAGAON, DIST- MORIGAON (ASSAM), PIN- 782127

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI- 110001

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

3:THE DY. COMMISSIONER
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782127

4:THE SUPERINTENDENT OF POLICE (B)
DIST- MORIGAON
ASSAM
PIN- 782127

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI- 110001

6:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)

BHANGAGARH
GHY- 3

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

ORDER

Date : 11.04.2023
(AM Bujor Barua, J)

Heard Ms. P Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of the Government of Assam, Ms. P Dowariah, learned counsel for the respondent no. 3 being the Deputy Commissioner, Morigaon and Mr. AI Ali, learned counsel for the respondent no. 5 being the Election Commission of India.

2. The petitioner Ayub Ali had been referred to the Foreigners Tribunal No. 2, Morigaon for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of Case No. F.T. 03/18. An opinion dated 28.08.2018 had been rendered declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies on the voters' list of 1966 of

village Hatilarua Pathar of PS Laharighat which contains the name of Askar Ali, S/O Sekbar at Sl. No. 97 and Rahiman Nessa, W/O Askar Ali at Sl. No. 98 and both are shown to be residing in the same house no. 34. The petitioner thereafter relies on the voters' list of 1989 of village Hatilarua Pathar PS Laharighat which contains the name of Ashkar Ali, S/O Sekbar at Sl. No. 77 and that of Ayub Ali, S/O Ashkar at Sl. No. 86 and both are shown to be residing in the same house no. 23. The petitioner by relying on the aforesaid two voters' lists claims that the burden under Section 9 of the Foreigners Act, 1946 that he is a citizen of India had been discharged.

5. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' lists of 1966 of village Hatilaura Pathar and 1989 of village Hatilarua Pathar and arrive at its conclusion as to whether the petitioner Ayub Ali had discharged the burden under Section 9 of the Foreigners Act, 1946.

6. The petitioner to produce the complete voters' lists from the year 1966 to 1989 of village Hatilarua Pathar before the Tribunal for its examination. The respondents in the Home Department of the Government of Assam through the Superintendent of Police (Border) may make their verification as to whether Ayub Ali, S/O Ashkar Ali of the voters' list of 1989 of village Hatilarua Pathar and the petitioner proceedee Ayub Ali are the one and the same person. The petitioner to also explain before the Tribunal as to why the name of Rahiman Nessa, W/O Askar Ali which appeared in the voters' list of 1966 of village Hatilarua Pathar does not appear in the subsequent voters' lists.

7. The petitioner to appear before the Tribunal on 29.05.2023.

8. If the reasoned order is in favour of the petitioner, the same may prevail over the opinion/order dated 28.08.2018 passed in Case No. F.T.03/2018 and if

against, consequence under the law is applicable to the petitioner.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant