

GAHC010267002022



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

Case No. : WP(C)/8402/2022

MD MIRAJ ALI
S/O LATE AFIR UDDIN, R/O VILL- GOTONGA, P.S.-SAMAGURI, P.O.-
RONGAGARA, DIST- NAGAON (ASSAM), PIN-782140

VERSUS

THE UNION OF INDIA AND 5 ORS
NOTICE THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
NAGAON
AT NAGAON

4:THE SUPERINTENDENT OF POLICE (BORDER)
SIVASAGAR DISTRICT
ASSAM

5:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

6:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
ACHYUT PLAZA
G.S. ROAD

BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR. U K DAS

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

BEFORE

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

O R D E R

17.07.2023

(A.M. Bujor Barua, J)

Heard Mr. UK Das, learned counsel for the petitioner. Also heard Mr. AK Dutta, 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 Ms. U Das, learned counsel for the Deputy Commissioner, Sivasagar.

2. The petitioner Md. Miraj Ali had been referred to the Foreigners Tribunal, Jorhat 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 Case No. FT/SVR/168/2011, wherein an opinion dated 22.09.2022 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 1965 of village Gatanga in the Nagaon district, which contains the name of A Jabar son of A Barik at serial No. 278 and it is claimed that A Jabar is the grandfather of the petitioner. Reliance is also placed on the voters list of 1989 of village Gatanga containing the name of Md. Afir Uddin son of A Jabbar and it is claimed that Md. Afir Uddin is the father of the petitioner. Reliance is also placed on the

voters list of 2005 also of village Gatanga, which contains the name of Miraj Ali son of Afiruddin at serial No. 359.

4. It is claimed that as the voters list of 2005 shows Miraj Ali to be son of Afiruddin, the voters list of 1989 shows Afiruddin to be son of A Jabbar all of village Gatanga, therefore, the petitioner had discharged the burden under section 9 of the Foreigners Act, 1946 to prove that he is not a foreigner.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of 1965, 1989 and 2005 of village Gatanga and thereafter pass a reasoned order thereon. The petitioner shall produce the complete voters list of village Gatanga of the years 1965, 1989 and 2005 before the Tribunal for its examination. The respondents in the Home Department may make their own verification and submit a report before the Tribunal. Upon 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 22.09.2022 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 10.08.2023. 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