

GAHC010268002022



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

Case No. : WP(C)/8386/2022

JAHAR ALI
S/O- LATE IBRAHIM MANDAL,
R/O- VILLAGE- KOREYA PAHAR,
P.S.- JOGIGHOPA,
DIST.- BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
GOVT. OF INDIA, NEW DELHI-01.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM
781301.

4:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
781301.

5:THE ELECTION COMMISSIONER
ASSAM

HOUSE FED
DISPUR
GUWAHATI- 781006.

6:THE NODAL OFFICER
NRC
BHANGAGARH
GUWAHATI- 781005

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

26.07.2023

(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. A Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Bongaigaon and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Bongaigaon.

2. The petitioner, namely, Jahar Ali was referred to the Foreigners Tribunal Bongaigaon No.2 Abhayapuri for rendering an opinion as to whether he is a foreigner within the meaning of Foreigner Act, 1946 which resulted in the

registration of Case No.BNGN/FT/Case No. 3010/2007, arising out of Ref: BNGN P.E.No.205/07 wherein an opinion dated 01.07.2020 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Barkolia Serso in the present South Salmara district which contains the name of Ibrahim Mandal, son of Solim at Sl.No.32 and that of Badatun Bibi wife of Ibrahim at Sl.No.33 and it is claimed that Ibrahim Mandal is the father of the petitioner and Badatun Bibi is the mother of the petitioner. The voters list of 1970 of village Barkolia Serso also contains the same information and that the name of Hasen Ali Mandal son of Ibrahim appears at Sl.No.39. Further reliance is also placed on the voters list of 1985 of village Barkolia Serso containing the name of Hasen Ali son of Ibrahim at Sl.No.251, and that of Jahin Uddin, son of Ibrahim at Sl.No.253 and it is claimed that the name of Jahar Ali is wrongly recorded as Jahin Uddin and both are one and the same person. The voters list of 1994 of village Barkolia Serso contains the name of Jahar Ali, son of Ibrahim Mandal at Sl.No.531 as well as the voters list of 2013 of the same village Barkolia Serso contains the name of Jahar Ali son of Ibrahim Ali at Sl.No.187. As the name of Jahar Ali, son of Ibrahim appears in the subsequent voters list and the name of Ibrahim Mandal son of Solim appeared in the voters lists of 1966 and 1970, it is claimed that the burden under Section 9 of the Foreigners Act 1946 has been discharged by the petitioner to prove that he is a citizen of India.

5. In view of the above, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the voters list from the years 1966 up to 2013 in respect of village Barkolia Serso. The petitioner to produce the complete and continuous voters list of village Barkolia Serso for examination of the Tribunal.
6. The respondents in the Home Department may also make their own verification on the aforesaid aspect, more particularly, as to whether Jahar Ali son of Ibrahim of the 1994 and 2013 voters lists and Jahar Ali, the writ petitioner/proceedee are one and the same person and submit a report before the Tribunal, if so advised.
7. Accordingly, the petitioner shall appear before the Tribunal on 21.08.2023.
8. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 01.07.2020 of the Foreigners Tribunal Bongaigaon No.2 Abhayapuri in Case No.BNGN/FT/Case No. 3010/2007, arising out of Ref: BNGN P.E.No.205/07 and if it is against the petitioner, consequential action under the law shall follow.
9. Till the reasoned order is passed, no coercive action be taken against the petitioner.
10. Writ petition stands disposed of in the above terms.

11. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant