

GAHC010268642018



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

Case No. : WP(C)/8384/2018

ABDUL HASHEM MIAH
S/O- LT HAZI ABDUL HOQUE, VILL- SUNDARPARA PART-III, P.S.
FAKIRGANJ (EARLIER SOUTH SALMARA), DIST- DHUBRI, ASSAM

VERSUS

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

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

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI

4:THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
GHY SHILLONG ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005

5:THE DY. COMMISSIONER OF DHUBRI DISTRICT
DHUBRI
P.O.
P.S. AND DIST- DHUBRI
ASSAM

PIN- 783301

6:THE SUPERINTENDENT OF POLICE (B)
DHUBRI DISTRICT
DHUBRI
P.O.
P.S. AND DIST- DHUBRI
ASSAM

PIN- 78330

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 : 08.05.2023

(A.M. Bujor Barua, J)

Heard Mr. A.T. Sarkar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Coordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Dhubri.

2. The petitioner Abdul Hashem Miah was referred to the Foreigners' Tribunal No. 2, Dhubri for rendering an opinion as to whether he is a person who had

entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T. Case No. 138/F/16 was registered. The Tribunal rendered its opinion dated 26.11.2018 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Sundarpara Pt. III, P.S. South Salmara in the present South Salmara, Mankachar district which contains the name of Hazi Abdul Hoque son of Osimuddin at Sl. No. 126. The petitioner also relies upon the voters' list of 1985 of village Sundarpara Pt. III, P.S. South Salmara in the present South Salmara, Mankachar district which contains the name of Ha. Abdul Hoque son of Posimuddin at Sl. No. 359 and that of A. Hoshem son of Ha. Abdul Hoque at Sl. No. 363. The petitioner claims that A. Hoshem son of Ha. Abdul Hoque at Sl. No. 363 of the voters' list of 1985 of village Sundarpara Pt. III is the petitioner himself and that Ha. Abdul Hoque son of Posimuddin at Sl. No. 359 is in fact Hazi Abdul Hoque son of Osimuddin at Sl. No. 126 of the voters' list of 1966 of village Sundarpara Pt. III.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Dhubri to examine as to Hazi Abdul Hoque son of Osimuddin at Sl. No. 126 of the voters' list of 1966 of village Sundarpara Pt. III and Ha. Abdul Hoque son of Posimuddin at Sl. No. 359 of the voters' list of 1985 of village Sundarpara Pt. III are one and the same person. The State respondents in the Home Department of the Government of Assam through the Superintendent of Police(B), Dhubri may also make their own verification on the correctness of the aforesaid information as well as on the authenticity of the aforesaid voters' lists that have been relied upon by the petitioner. The Tribunal to also make an

enquiry as to whether A. Hoshem son of Ha. Abdul Hoque at Sl. No. 363 of the voters' list of 1985 of village Sundarpara Pt. III and the petitioner Abdul Hashem Miah are one and the same person. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 26.11.2018 in F.T. Case No. 138/F/16 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 14.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

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Comparing Assistant