

GAHC010280802019



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

Case No. : WP(C)/714/2020

SATTAR ALI
S/O- MD. FARAJ ALI, R/O- VILL- NATUN DEOCHAR, P.S- BOKO, DIST-
KAMRUP, ASSAM, PIN- 781123

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, GOVT OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005

5:THE DEPUTY COMMISSIONER
KAMRUP
P.O- AMINGAON
P.S- AMINGAON
DIST- KAMRUP
ASSAM
PIN- 781031

6:THE DEPUTY COMMISSIONER OF POLICE (B)
CITY GUWAHATI
KAMRUP(M)
ASSAM
PIN- 781001

7:THE OFFICER IN CHARGE
BOKO POLICE STATION
P.O- BOKO
DIST- KAMRUP
ASSAM
PIN- 78112

Advocate for the Petitioner : MR. M AHMED

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

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

ORDER

Date : 12.05.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2, 5, 7 and 8 being the authorities under the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the

respondent no. 3 being the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 6 being the Deputy Commissioner, Kamrup(M).

2. The petitioner Md. Sattar Ali had been referred to the Foreigners' Tribunal No. 4, Kamrup(M) 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 F.T. Case No. FT (K(M)-4) 469/16. The Tribunal rendered an opinion dated 30.08.2019 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 Larujan which contains the name of Ismail Seikh, S/O Tarif at Sl. No. 168 and that of Fajar Uddin, S/O Ismail at Sl. No. 169 where both of them are shown to be residing in the same house no. 58. The petitioner also relies on the voters' list of 1970 of village Larujan which contains the name of Ismail Sheikh, S/O Tarif at Sl. No. 172 and that of Fajar Uddin, S/O Ismail at Sl. No. 173 and both of them are shown to be residing in the same house no. 58. The petitioner claims that the family of Ismail Seikh and Fajar Uddin shifted to village Dhelachar sometime after 1979 and settled at village Dhelachar. Accordingly, the voters' list of village Dhelachar of the year 1985 is relied upon which contains the name of Fatez, S/O Ismail at Sl. No. 1037 and that of Sattar, S/O Faraj at Sl. No. 1042 and both are shown to be residing in the same house no. 271. The said voters' list also contains the name of Hajira Khatun, W/O Faraj immediately after Fatez and it is clarified Fatez of Sl. No. 1037 is actually Faraj alias Fajar and it is a misspelling.

5. Accordingly, as the name of Sattar and Fatez alias Faraj alias Fajar appears

in the same voters' list and the name of Fatez alias Faraj alias Fajar appears along with Ismail in the voters' list of 1966 and 1971, it is claimed that the petitioner has discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is a citizen of India. The only aspect that remains for consideration is that there is a claim that the family had shifted from village Larujan to village Dhelachar and whether the said stand is acceptable. For the purpose, we required the respondent Election Commission to produce the complete voters' lists of village Larujan and village Dhelachar from 1966 upto 1985.

6. The complete voters' lists as indicated above have been produced before the Court.

7. A reading of the voters' lists indicate that the name of Fatez alias Faraj alias Fajar, S/O Ismail and other of the family did not appear any further in the voters' lists of Larujan after 1971 whereas the name of Fatez alias Faraj alias Fajar, S/O Ismail and others of the family started appearing in the voters' list of village Dhelachar after 1985 whereas it did not appear in the voters' lists of village Dhelachar earlier to 1985. As the names of Fatez alias Faraj alias Fajar, S/O Ismail and others of the family were discontinued in the voters' lists of village Larujan after 1971 and included in the voters' list of 1985 of village Dhelachar, where again their names did not appear in the voters' list of village Dhelachar prior to 1985, an inference can be drawn that the stand of shifting from Larujan to village Dhelachar would be acceptable.

8. In the circumstance, we remand the matter back to examine the complete voters' list of the aforesaid villages and arrive at a conclusion as to whether the petitioner proceedee Sattar Ali and Sattar, S/O Faraj whose name appears at Sl. No. 1042 along with Fatez alias Faraj alias Fajar in the voters' list of 1985 of village Dhelachar are one and the same person and thereafter, pass a reasoned

order thereon.

9. The complete voters' lists produced by the Election Commission are kept on record and the petitioner may rely and produce the same before the Tribunal, if so advised.

10. The petitioner to appear before the Tribunal on 27.06.2023.

11. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 30.08.2019 passed in F.T. Case No. FT (K(M)-4) 469/16 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant