

GAHC010301242019



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

Case No. : WP(C)/9122/2019

JANIF ALI

S/O- SAMES ALI, VILL- NO. 1 ALOPATI CHAR, P.S. BAGHBAR (NOW
ALOPATI CHAR), DIST. BARPETA, ASSAM, PIN- 781127

VERSUS

THE UNION OF INDIA AND 6 ORS.

REP. BY THE SECY. OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-1

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.

DISPUR

GHY-6

3:THE ELECTION COMMISSION OF INDIA

NEW DELHI-1

4:THE STATE COORDINATOR OF NRC

ASSAM

DISPUR

GHY-6

5:THE DY. COMMISSIONER

BARPETA

DIST.- BARPETA

ASSAM

PIN- 781301

6:THE SUPERINTENDENT OF POLICE

BARPETA

DIST.- BARPETA
ASSAM
PIN- 781301

7:THE OFFICER-IN-CHARGE
ALOPATI CHAR P.S.
DIST.- BARPETA
ASSAM
PIN- 78112

Advocate for the Petitioner : MR. M I HUSSAIN

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

BEFORE

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

O R D E R

22.05.2023

(A.M. Bujor Barua, J)

Heard Mr. MI Hussain, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Janif Ali had been referred to the Foreigners Tribunal No. 6, Barpeta 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. 165/2017, wherein an opinion dated 29.05.2019 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1966 of village Alopali Nonke, police station Baghbar in the Barpeta district, which contains the name of Sames Ali son of Nayebali at serial No. 1180 and that of Kajali Nessa wife of Sames at serial No. 1181. The petitioner also refers to the voters list of 1971 of village Alopali Nonke, which contains the name of Sames Ali son of Nayebali at serial No. 1355 and Kajali Nessa wife of Sames at serial No. 1356. The petitioner thereupon relies upon the voters list of 1985 of village Alopali Char, which contains the name of Sames Uddin son of Nayebali at serial No. 556 and Kajali wife of Sames at serial No. 557. The petitioner also relies upon the voters list of 1997 of village Alopali Char, which contains the name of Kajali Bidhowa wife of Sames at serial No. 116 and Janif Ali son of Sames at serial No. 117 and both of them are shown to be residing in the same house No. 44.

4. It is claimed that Sames Ali of the 1966 and 1971 voters list of Alopali is the father of the petitioner while Kajali Nessa wife of Sames is the mother. After the death of Sames, Kajali Nessa is now depicted as Kajali Bidhowa in the voters list of 1997 showing the name of Kajali Bidhowa to be the wife of Sames and as the name of the petitioner also appears along with Kajali Bidhowa, a claim is made the petitioner had discharged the burden under section 9 of the Foreigners Act, 1946 that he is an Indian citizen.

5. As the name of Janif Ali and Kajali Bidhowa appears together in the voters list of 1997 and as the name of Kajali Nessa appears together with Sames Ali in the earlier voters list of 1966 and 1971, perhaps a prima-facie case has been made out that the petitioner is an Indian citizen.

6. In view of the above, the matter is remanded back to the Tribunal to examine the voters list of 1966 and 1971 as well as 1997 of village Alopali and

arrive at a reasoned conclusion. The petitioner shall produce all complete voters list of village Alopali from the year 1966 to 1997 for the perusal of the Tribunal. The respondents in the Home Department may make their own verification as to whether Janif Ali of the voters list of 1997 and the writ petitioner Janif Ali are one and the same person as well as whether Kajali Bidhowa of the 1997 voters list and Kajali Nessa wife of Sames Ali of the earlier voters list are also one and the same person. Upon doing the needful, the Tribunal may pass its reasoned order.

7. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 29.05.2019 and if it goes against the petitioner, consequence as per law shall follow.

8. The petitioner shall appear before the concerned Foreigners Tribunal on 05.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

9. The writ petition is allowed as indicated above.

10. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant