

GAHC010303262019



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

Case No. : WP(C)/316/2020

BELLAL HOSSAIN @ BILLAL HUSSAIN
S/O- RAHIM CHAND, R/O- VILL- AMABARI, BHUYANPARA, P.S-
FAKIRGANJ, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, SHASTRI BHAWAN, TILAK MARG, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GHY- 06

3:THE COMMISSIONER OF POLICE (B)
KAMRUP (M)
ASSAM
P.S- PANBAZAR
DIST- KAMRUP(M)
ASSAM

4:THE ELECTION OFFICER
KAMRUP (M)
DIST- KAMRUP(M)
ASSAM

5:THE DEPUTY COMMISSIONER
KAMRUP (M)
DIST- KAMRUP(M)
ASSAM

6:THE CHIEF COORDINATOR
NRC
ASSAM
DIST- KAMRUP(M)
DISPUR
GHY- 06

7:THE ELECTION COMMISSION
THE STATE OF ASSA

Advocate for the Petitioner : MR A ALI

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

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

ORDER

01.06.2023

(AM Bujor Barua, J)

Heard Mr. A Ali, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. T Pegu, 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 Commissioner of Police (B) Kamrup and Mr. NK Das, learned Government Advocate for the Deputy Commissioner, Kamrup(M).

2. The petitioner, Bellal Hossain @ Billal Hussain, was referred to the

Foreigners Tribunal Kamrup (M) 3rd Guwahati for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T.Case No.258/2017 wherein an opinion dated 30.04.2019 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. The petitioner relies upon the voters list of 1960 of village Ambari Union in the South Salmara district which contains the name of Hanif Ali Sheikh son of Ebrahim Ali at Sl.No.60 and it is claimed that Hanif Ali Sheikh is the grandfather of the petitioner. The petitioner further relies upon the voters list of 1966 of village Borkoliaserso in the Goalpara district which contains the name of Hanif Ali Mondal son of Ebrahim at Sl.No.34 and that of Falani Nessa wife of Hanif at Sl.No.35 and both are shown to be residing in the same House No.16. The petitioner also relies upon the voters list of 1970 of village Borkoliaserso containing the name of Hanif Ali Mandal son of Ebrahim at Sl.No.36 and Falani Nessa wife of Hanif at Sl.No.37 and both are shown to be residing in the same House No.14. Reliance is also placed on the voters list of 1997 of village Barkolia Serso, containing the name of Falani Beowa wife of Hanif Ali at Sl.No.102 and that of Rohim Chan son of Hanif at Sl.No.103 where both are shown to be residing in the same House No.37 and it is claimed that Rohim Chan is the father of the petitioner.

5. To substantiate his claim, the petitioner refers to a birth certificate issued by the Government of Assam of the Department of Health Services is relied upon which contains the information that the mother of Bellal Hossain is Halima Khatun and his father is Rohim Chan of village Ambari Bhuyanpara, PO Barkholia Sersow, P.S. Fakirganj in the erstwhile Dhubri district. Relying upon the information contained in the birth certificate a claim is made that the petitioner has discharged the burden under Section 9 of the Foreigners Act 1946 that he is the son of Rohim Chan of village Ambari Bhuyanpara, PO Barkholia Sersow, P.S. Fakirganj in the erstwhile Dhubri district.

6. The citizenship of Rohim Chan can be established from the voters list of 1997 of village Barkolia Serso where his name is shown along with Falani Beowa his mother, where the name of Falani Nessa appears with Hanif Ali in the 1966 and 1970 voters list of village Borkoliaserso. We have already noticed that the voters list of 1960 referred above is of village Ambari Union P.O Fakirganj in the South Salmara district, whereas the voters list of 1966 and 1970 are of village Borkoliaserso. The information contained in the birth certificate is that Rohim Chan is of village Ambari Bhuyan Para, PO Barkolia Serso in the Dhubri district which again has a similarity with Ambari Union of the 1960 voters list and the Post Office is Borkoliaserso which is consistent with the village of the voters list of 1966 and 1970 and the police station is Fakirganj which again is consistent with the post office referred in the voters list of 1960.

7. In view of the above, the matter stands remanded back to the Tribunal to examine the voters list of 1960 of village Ambari Union P.O Fakirganj and voters list of 1966, 1970 and 1997 of village Borkoliaserso as well as the birth

certificate issued by the Health Department, Government of Assam.

8. The petitioner shall appear before the Tribunal on 07.07.2023.

9. The respondents in the Home Department, Government of Assam may make their own verification of the aforesaid materials as indicated above and submit a report before the Tribunal, if so advised.

10. The petitioner to produce all the intervening and complete voters from the years 1966 to 1997 for examination of the Tribunal

11. The Tribunal 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 order dated 30.04.2019 of the Foreigners Tribunal Kamrup (M) 3rd Guwahati in F.T.Case No.258/2017 and if it is against the petitioner, consequential action under the law shall follow.

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

13. Writ petition stands disposed of in the above terms.

14. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant