

GAHC010001122023



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

Case No. : WP(C)/52/2023

MD MEHER ALI
S/O- LATE TOMILUDDIN @ TOMIN ALI,
VILL- HELA PAKHRI,
P.O.- DUBAPARA, P.S.- MORNOL,
DIST.- GOALPARA, PIN- 783101.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF HOME, NEW DELHI-1.

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

3:THE DEPUTY COMMISSIONER
GOALPARA
PIN- 783101.

4:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
PIN- 783101.

5:THE ELECTION COMMISSION
GOVT. OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR OF NRC
ASSAM

GUWAHATI- 32.

7:THE FOREIGNERS TRIBUNAL NO. 8TH
GOALPARA
REPRESENTED BY THE STANDING COUNSEL OF TRIBUNAL

PIN- 783101

Advocate for the Petitioner : MR. A ROSHID

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 07.06.2023
(AM Bujor Barua, J)

Heard Ms. T Begum, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2, 4 and 7 being the authorities under the Home Department of the Government of Assam, Mr. PK Medhi, learned counsel for the respondent no. 3 being the Deputy Commissioner, Goalpara and Mr. AI Ali, learned counsel for the respondent no. 5 being the authorities under the Election Commission of India.

2. The petitioner Meher Ali had been referred to the Foreigner's Tribunal No. 8, Goalpara 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. (8) Case No. 1254/2019. The Tribunal rendered an opinion dated 05.12.2022 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon the voters' list of 1966 of village Takimari Grezing Reserve Mouza Lakhipur in the Goalpara district which contains the names of Rohij Uddin, S/O Norman Sheikh at Sl. No. 1287 and that of Kepjan Bibi, W/O Rohij Uddin at Sl. No. 1288. The voters' list of 1970 of village Takimari Grezing Reserve also contains the same information. It is claimed that Rohij Uddin is the grandfather and Kepjan Bibi is the grandmother of the petitioner. The petitioner further relies upon the voters' list of 1979 of village Takimari Grezing Reserve which contains the name of Tomil, S/O Lt. Rohijuddin at Sl. No. 846 and that of Nesna Bibi, W/O Tomil Seru at Sl. No. 847. It is claimed that Tomil of the 1979 voters' list of village Takimari Grezing Reserve is the father and Nesna Bibi is the mother of the petitioner. Further reliance is also placed on the voters' list of 1985 of village Takimari Grezing Reserve which contains the name of Tomil Uddin, S/O Rohij Uddin at Sl. No. 91 and that of Nesna Khatun, W/O Tomil Uddin at Sl. No. 92 as well as the voters' list of 1993 of village Takimari Grezing Reserve which contains the name of Tomij Uddin, S/O Rohij at Sl. No. 192 and Nesruddin, W/O Tomij at Sl. No. 193. The petitioner further relies upon the voters' list of 1997 of village Takimari Grezing Reserve which contains the name of Tomil Uddin, S/O Rohij at Sl. No. 369, Nesna Khatun, W/O Tomil at Sl. No. 370 and that of Meher Ali, S/O Tomil at Sl. No. 372. It is claimed that Meher Ali of the 1997 voters' list of village Takimari Grezing Reserve is the petitioner himself and as his name appears along with Tomil Uddin and both are shown to be residing in the same house no. 993, we are in a situation that the name of Tomil Uddin, S/O Rohij appears in the voters' list of 1985 and 1993 of the same village Takimari Grezing Reserve and further the names of Rohij Uddin along with Kepjan Bibi appear in the

voters' lists of 1966 and 1970 of village Takimari Grezing Reserve, a prima facie case has been made out by the petitioner discharging the burden under Section 9 of the Foreigners Act, 1946.

5. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' lists of 1966, 1970, 1979, 1985, 1993 and 1997 of village Takimari Grezing Reserve and pass a reasoned order thereon. The respondents in the Home Department may also make their own enquiry and verification as to whether Meher Ali of 1997 voters' list of village Takimari Grezing and the petitioner proceedee Meher Ali are one and the same person. Upon doing the needful, the Tribunal to pass a reasoned order.

6. The petitioner to appear before the Tribunal on 13.07.2023.

7. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 05.12.2022 passed in F.T. (8) Case No. 1254/2019 and if against, consequence under the law is applicable to the petitioner.

8. 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