

GAHC010003892018



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

Case No. : WP(C)/663/2018

ABDUL RASHID
S/O- LATE ABDUL SOBUR@ SOBUR HUSSAIN, R/O- VILL- BAMUNPARA,
P.S- MATIA, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA
REP. BY THE SECRETARY TO THE MIN OF HOME AFFAIRS, GOVT OF
INDIA, MIN OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW
DELHI- 1

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
DEPTT. OF HOME
DISPUR
GHY- 6

3:THE SUPERINTENDENT OF POLICE(B)
GOALPARA
P.O AND DIST- GOALPARA
ASSAM
PIN- 783101

4:THE DEPUTY COMMISSIONER
GOALPARA
P.O AND DIST- GOALPARA
ASSAM
PIN- 783101

5:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GHY- 5

6:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-0

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

Date : 23.05.2023
(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 5 being the authorities under the Union of India and NRC respectively, Mr. J Payeng, learned counsel for the respondents no. 2 and 3 being the authorities under the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 6 being the authorities under the Election Commission of India and Ms. K Phukan, learned counsel for the respondent no. 4 being the Deputy Commissioner, Goalpara.

2. The petitioner Abdul Rashid had been referred to the Foreigners' Tribunal No. 5, 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 Case No. F.T/5/278/MA/2016. The Tribunal rendered an opinion dated 12.07.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding reliance is placed on the voters' list of 1966 of

village Ramapara Pam PS Baghbor Mouza Baghbor in the present Barpeta district which contains the names of Tarifullah Sheikh S/O Hadu at Sl. No. 230 and that of Hajira Khatun W/O Tarif at Sl. No. 231 and that of Fojjila Bewa W/O Sobur at Sl. No. 232 and all of them are shown to be residing in the same house no. 55. It is stated that Fojjila Bewa is the mother of the petitioner and Sobur is the father and that Sobur is the son of Tarifullah Sheikh but unfortunately Sobur predeceased Tarifullah Sheikh and therefore, his name does not appear in the voters' list of 1966 of village Ramapra Pam. To show that the Sobur is the son of Tarifullah Sheikh, reliance is placed on certain revenue paying receipts dated 03.01.1956 and 28.01.1958 which contains the information that the revenue amount was received from Abdul Sobur S/O Tarifulla in respect of a plot of land of village Ramapara Pam. Accordingly, it is sought to be established that Abdul Sobur is the son of Tarifullah Sheikh of the voters' list of 1966 of village Ramapara Pam.

5. To substantiate that the petitioner Abdul Rashid is the son of Abdul Sobur who in turn is the son of Tarifulla Sheikh, reliance is placed on a jamabandi of a plot of land of village Ramapara Pam wherein as per the order of the Circle Officer dated 10.10.2017 in Mutation Case No. BAR/BAG/2017-18/806/FMUT land had been mutated, in favour of, amongst others, Abdul Rashid S/O Sabur Hussain in place of Sabur Hussain and in the names of the pattadars it is indicated that in place of Tarifullah Sheikh S/O Hadu and Sabur Hussain S/O Tarifullah Sheikh, amongst others, the name of Abdul Rashid had been included showing him to be son of Sabur Hussain. Accordingly, the petitioner claims that he has established that he is the son of Sabur Hussain who again is the son of Tarifullah Sheikh of the voters' list of 1966 of village Ramapara Pam.

6. In view of the above, the matter stands remanded back to the Tribunal to

examine the veracity of the voters' list of 1966 of village Ramapara Pam, revenue paying receipts dated 03.01.1956 and 28.01.1958 as well as the jamabandi of a plot of land of village Ramapara Pam and pass a reasoned order on the claim of the petitioner that he has discharged the burden under Section 9 of the Foreigners' Act, 1946. To facilitate the process, the petitioner to produce the complete voters' list of 1966 of village Ramapara Pam and all other subsequent voters' lists of village Ramapara Pam, the revenue paying receipts dated 03.01.1956 and 28.01.1958 as well as the complete order of the Circle Officer dated 10.10.2017.

7. The respondents in the Home Department may also make their own verification on the veracity of the aforesaid information contained in the aforesaid documents and submit a report before the Tribunal. Both the petitioner as well as the respondents may adduce any further evidence, if so advised. Upon doing so, the Tribunal to pass a reasoned order.

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

9. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 12.07.2017 passed in Case No. F.T/5/278/MA/2016 and if against, consequence under the law is applicable to the petitioner.

10. 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