

GAHC010011592023



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

Case No. : WP(C)/335/2023

MD EMAN HUSSAIN @ IMAN HOSEN
S/O- LATE RIYAJ UDDIN SHEIKH @ RIYAJ UDDIN, R/O- VILL-
MONAKOSHA (NEPALIKHUTI, NALDOBA), P.S- MORNOL, DIST- GOALPARA,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, HOME DEPTT, NEW
DELHI- 01

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

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
PIN- 110001

4:THE DEPUTY COMMISSIONER
GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783121

5:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
DIST- GOALPARA

ASSAM
PIN- 78312

Advocate for the Petitioner : MR. S HOQUE

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

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

ORDER

Date : 25-01-2023

1. Heard Mr. S Hoque, learned counsel for the petitioner.
2. Also heard Mr. U Goswami, learned CGC for the respondent No.1, Ms. A Verma, learned counsel for the respondent No.2, Mr. A Ali, learned counsel for the respondent No.3 Election Commission of India, Ms. U Das learned Additional Senior Govt. Advocate for respondent No. 4, and Ms. L Devi, learned counsel for respondent No. 5.
3. The petitioner Md. Eman Hussain @ Iman Hosen had been referred to the Foreigners Tribunal No.4, Goalpara for a determination as to whether he is a person who had entered into the State of Assam subsequent to 25.03.1972 and the consequential F.T. Case No.-FT(G-4)M/578/18 was registered.
4. Before the Tribunal, the petitioner exhibited the 1996 voters list of village Monakosha, Mouza Motia Tehsil of Goalpara sub division which shows that Riyajuddin Sheikh son of Sukur Ali aged 35 years appears at serial No.34 of the said list. The petitioner further exhibited the voters list of 1997 also of village Monakosha of Goalpara sadar sub

division wherein at serial 320 the name of Riyajuddin Sheikh son of Sukur Ali appears and that at serial No.325 the name of Eman Hussain son of Riyajuddin Sheikh appears. The petitioner claims that the Eman Hussain of serial No.325 of the voters list of 1997 of Monakosha village is the petitioner and accordingly, seeks to establish that he is a citizen of India and not a person who entered Assam subsequent to 25.03.1971.

5. If Eman Hussain son of Riyajuddin Sheikh of serial No.325 of the voters list of 1997 of Monakosha village had been referred to the Tribunal resulting in registration of FT Case No. F.T. Case No.-FT(G-4)M/578/18, it has to be understood that the petitioner had established his citizenship. But a factual determination would be required as to whether Eman Hussain son of Riyajuddin Sheikh of 1997 voters list of Monakosha village and the Eman Hussain who had been referred to the Foreigners Tribunal are one and the same person.

6. For the purpose we remand the matter back to the Foreigners Tribunal No.4 for arriving at its conclusion as to whether Eman Hussain son of Riyajuddin Sheikh of 1997 voters list of Monakosha village and the Eman Hussain who had been referred to the Foreigners Tribunal are one and the same person and if the tribunal arrives at a conclusion that they are one and the same person, appropriate order may be passed.

7. On the matter being remanded back, the order/opinion dated 31.11.2022 in FT Case No. F.T. Case No.-FT(G-4)M/578/18 is set aside.

8. We are clarifying that although we have set aside the order dated 31.11.2022 in FT Case No. F.T. Case No.-FT(G-4)M/578/18, if

after reexamining the matter as indicated above, the Tribunal is again of the view that the petitioner is a person who entered Assam subsequent to the 25.03.1972, the tribunal would be at liberty to pass its own reasoned order as may be advisable under the law.

9. As agreed, the petitioner to appear before the tribunal on 15.02.2023.

JUDGE

Comparing Assistant