

GAHC010029132016



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

Case No. : WP(C)/6724/2016

SAHAR ALI
S/O. LT. EABAD ALI, VILL. RAMHARIR CHAR PART-IIIROSHIKPUR, P.S.
PANCHARATNA, DIST. GOALPARA, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-01.

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

3:THE DY. COMMISSIONER

GOALPARA DISTRICT
ASSAM.

4:THE SUPDT. OF POLICE B

GOALPARA
DIST. GOALPARA
ASSAM.

5:THE OFFICER IN CHARGE

PANCHARATNA POLICE STATION
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR.M R Z CHOUDHURY

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

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

17.08.2023

(AM Bujor Barua, J)

Heard Mr. MU Mahmud, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, 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, the Superintendent of Police (B) Goalpara as well as the Officer-in-Charge Pancharatna Police Station Goalpara and Mr. P Sarma, learned Government Advocate for the Deputy Commissioner, Goalpara.

2. The petitioner, namely, Sahar Ali was referred to the Foreigners Tribunal Nagaon No.5th at Goalpara for rendering an opinion as to whether he is a foreigner within the meaning of Foreigner Act, 1946 resulting in the registration of F.T. Case No.F.T.5/53/MA/16 arising out of IMDT Reference Case No.438/99 wherein an opinion dated 20.09.2016 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. In the writ proceeding, the petitioner relies upon the voters list of 1954 of village Ramhari Rashikpur Musalmanpara PS Lakhipur in the Goalpara district which contains the name of Eabad Ali son of Ejat Ali at Sl.No.58 and that of Aysha Khatun wife of Eabad Ali at Sl.No.59 where both are shown to be residing in the same House No.25 and it is claimed that Eabad Ali is the father of the petitioner and Aysha Khatun is the mother of the petitioner. The voters list of 1966 of village Ramharirchar Part III contains the name of Asaton Bewa wife of Eabad Ali at Sl.No.312 where Eabad Ali is shown to be a deceased. The petitioner thereafter relies upon the voters list of 1970 of village Ramharirchar Part III which contains that name of Asaton Bewa wife of Eabad at Sl.No.204 as well as the voters list of 1985 of the same village Ramharirchar Part III which contains the name of Sahar Ali son of Eabad at Sl.No.346 and accordingly it is claimed that as Sahar Ali is the son of Eabad and the name of Eabad Ali appeared in the voters list of 1954 of village Ramhari Rashikpur Musalmanpara, the petitioner may have discharged the burden under Section 9 of the Foreigners Act 1946 that he not a foreigner. It is explained that the village Ramhari Rashikpur Musalmanpara later on came to be called as Ramharirchar Part III.

5. In the circumstance, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the complete and continuous voters list of village Ramhari Rashikpur Musalmanpara /Ramharirchar Part III from the years 1954 to 1985.

6. The petitioner to produce the complete and continuous voters list of village Ramhari Rashikpur Musalmanpara /Ramharirchar Part III from the years 1954 to 1985 for examination of the Tribunal.
7. The respondents in the Home Department may also make their own verification on the aforesaid aspect, more particularly, as to whether the village Ramhari Rashikpur Musalmanpara and Ramharirchar Part III are one and the same village and submit a report before the Tribunal, if so advised.
8. Accordingly, the petitioner shall appear before the Tribunal on 18.09.2023.
9. The Tribunal upon doing the needful and 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 opinion dated 20.09.2016 of the Foreigners Tribunal Nagaon No.5th at Goalpara in F.T. Case No.F.T.5/53/MA/16 arising out of IMDT Reference Case No.438/99 and if it is against the petitioner, consequential action under the law shall follow.
10. Till the reasoned order is passed, no coercive action be taken against the petitioner.
11. Writ petition stands disposed of in the above terms.

12. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant