

GAHC010029682019



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

Case No. : WP(C)/986/2019

ISHA HOQUE @ ISHA HAQUE ALI
S/O- KODOM ALI, R/O- VILL- BANGTIMARI, P.S. MANKACHAR, DIST-
SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY ITS SECY., GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW
DELHI- 110001

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

3:THE DIRECTOR GENERAL OF POLICE (ADMN.)
ASSAM
ULUBARI
GHY-7

4:THE DISTRICT MAGISTRATE CUM DY. COMMISSIONER
KAMRUP (M)
DIST- KAMRUP (M)
ASSAM
PIN- 781001

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP (M)
DIST- KAMRUP (M)
ASSAM
PIN- 781001

6:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)
GHY
ASSAM
GHY-5

7:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 11000

Advocate for the Petitioner : MR. M KHAN

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

31.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2, 3 and 5; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.7 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.4.

2. The petitioner Isha Hoque had been referred to the Foreigners' Tribunal No.2, Kamrup(M), 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, which resulted

in registration of F.T. Case No.1239/2015. The Tribunal rendered an opinion dated 10.01.2019 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1966 of village Pecharkandi, in the present South Salmara Mankachar district, which contains the names of Monser Ali Sk S/o Felu at Sl.No.79 and that of Soburjan Bibi W/o Monser at Sl.No.80 and it is claimed that Monser Ali Sk is the grandfather of the petitioner. The petitioner thereafter relies upon the voters list of 1977 of village Pecharkandi, which contains the name of Kodom Ali Sk S/o Monser at Sl.No.231 and it is claimed that Kodom Ali Sk of the 1977 voters list is the father of the petitioner. To substantiate that Kodom Ali is the father of Isha Hoque, reliance is placed on the voters list of 2010 of village Bangtimari which contains the names of Kodom Ali S/o Monser Ali at Sl.No.154 and that of Isha Hoque S/o of Kodom Ali at Sl.No.155 and both are shown to be residing in the same house No.60 Ka. To substantiate that the family of Isha Hoque had shifted from village Pecharkandi to village Bangtimari, reliance is placed on a registered sale deed by which Isha Hoque Ali S/o Kodom Ali of village Pecharkandi had purchased the plot of land at village Bangtimari. It is stated that after purchasing of the land at village Bangtimari the family had shifted from village Pecharkandi to village Bangtimari resulting their names appearing in the voters list of 2010 of village Bangtimari. If the information contained in the sale deed referred above is correct, the petitioner perhaps may have discharged the burden to show that the family had shifted from village Pecharkandi to village Bangtimari and if it is so, through Monser Ali Sk of the 1966 voters list of village Pecharkandi, the petitioner discharged the burden under Section 9 of the Foreigners Act, 1946.

4. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1966 and 1977 of village Pecharkandi as well as the sale deed by which Isha Hoque Ali S/o Kodom Ali of village Pecharkandi had purchased a plot of

land at village Bangtimari and pass a reasoned order on the claim of the petitioner that the burden under Section 9 of the Foreigners Act, 1946 had been discharged. The respondents in the Home Department may make their own verification and submit a report before the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 10.01.2019 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 05.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

6. Send back the LCR immediately.

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

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant