

GAHC010054382018



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

Case No. : WP(C)/1669/2018

MD ABDUL RAHMAN @ ABDUL RAHMAN
S/O LT. JASUM UDDIN
VILL- KATARATI
P.S. SOOTEA
DIST. BISWANATH, ASSAM

VERSUS

UNION OF INDIA AND 8 ORS.
TO BE REP. BY SECRETARY TO THE GOVT. OF INDIA, HOME
DEPARTMENT, NORTH BLOCK, NEW DELHI-1.

2:THE STATE OF ASSAM

TO BE REP. BY COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
HOME DEPARTMENT

DISPUR
GUWAHATI-06.

3:ADDITIONAL DIRECTOR GENERAL OF POLICE

ASSAM (BORDER)
BHANGAGARH
GUWAHATI-05.

4:ELECTION COMMISSION OF INDIA

REP. BY SECRETARY
NIRVASAN SADAN
NEW DELHI-1.

5:NATIONAL REGISTRAR OF CITIZENS-NRC

STATE CO-ORDINATOR
ACHUYT PLAZA
BHANGAGARH
GUWAHATI-2
ASSAM

6:DEPUTY COMMISSIONER

SONITPUR
ASSAM

7:DEPUTY COMMISSIONER

BISWANATH
ASSAM

8:SUPERINTENDENT OF POILICE (BORDER)

SONITPUR
ASSAM

9:SUPERINTENDENT OF POLICE (BORDER)

BISWANATH
ASSA

Advocate for the Petitioner : MR. A S TAPADER

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

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

ORDER

Date : 02.08.2023
(A.M. Bujor Barua, J)

Heard Mr. A.S. Tapader, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 5, being the Union of India and

the State Co-ordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2, 3, 8 and 9, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 4, being the Election Commission of India and Ms. K. Phukan, learned counsel for the respondents No. 6 and 7, being the Deputy Commissioner, Sonitpur and the Deputy Commissioner, Biswanath, respectively.

2. The petitioner Md. Abdul Rahman @ Abdul Rahman was earlier referred to the Foreigners' Tribunal No. 2, Sonitpur, Tezpur for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 and accordingly F.T. Case No. 65/2015 was registered wherein the Tribunal had rendered its opinion dated 20.01.2016 declaring the petitioner to be not a foreigner. Thereafter, the petitioner was again referred to the Foreigners' Tribunal No. 6, Tezpur, Sootea for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946 and accordingly F.T.C.(6) Case No. 137/2017 was registered and the Tribunal had served notice dated 30.08.2017 upon the petitioner for his appearance. Being aggrieved by the subsequent notice dated 30.08.2017, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Katerati, Mouza Sootea in the present Biswanath district which contains the name of Jash Muddin son of Posha at Sl. No. 2523. It is claimed that Jash Muddin is the father of the petitioner. To substantiate the same, reliance is also placed upon the voters' list of 1993 of village Katerati in the present Biswanath district which contains the name of Abdul Rahman son of Jsumuddin at Sl. No. 628. It is claimed that Abdul Rahman of the voters' list of 1993 of village Katerati is the petitioner himself. The petitioner also claims that by another opinion dated 20.01.2016 in F.T. Case No. 65/2015 before the Foreigners'

Tribunal No. 2, Sonitpur, Tezpur, the petitioner was declared to be not a foreigner and accordingly, a claim is also made that the present proceeding is barred by the principle of res judicata.

4. Although the principle of res judicata is applicable in the proceedings before the Foreigners' Tribunal as per the judgment of the Hon'ble Supreme Court in the case of *Abdul Kuddus Vs. Union of India and Ors.*, reported in (2019) 6 SCC 604, we have also examined the opinion dated 20.01.2016 where the Tribunal had merely recorded the materials that may have been produced by the proceedee and thereupon arrived at its conclusion that in the view of the Tribunal the proceedee is an Indian citizen. However no reason is forthcoming in the opinion of the Tribunal as to why the Tribunal had arrived at its conclusion that the petitioner is an Indian citizen.

5. In order to attract the principle of res judicata in the earlier proceeding, it must be between the same parties and it also must be decided between the parties. In the absence of any reasoned conclusion, we cannot accept that in the opinion dated 20.01.2016 there was a decision in favour of the petitioner. Consequently, we do not accept the plea of res judicata by the petitioner, however, from the voters' lists of 1966 and 1993 of village Katerati, it appears that the petitioner can discharge the burden under Section 9 of the Foreigners Act, 1946.

6. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 6, Tezpur, Sootea to examine the aforesaid voters' lists of 1966 and 1993 of village Katerati. The petitioner to produce the complete and continuous voters' lists from the year 1966 to 1993 of village Katerati before the Tribunal and if the voters' lists so produced give an indication that the petitioner is an Indian citizen, the Tribunal may pass a reasoned order.

7. The petitioner to appear before the Tribunal on 08.09.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

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Comparing Assistant