

GAHC010061722021



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

Case No. : WP(C)/2372/2021

1. SUBHASH GHOSH @ SUBHASH CHANDRA GHOSH
S/O LATE NITYANANDA GHOSH, R/O VILL. NAKHOLA GRANT, POLICE
STATION JAGIROAD, DIST. MORIGAON, ASSAM, PIN 782403

VERSUS

1. THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, NEW DELHI 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI 781006

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM 1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN 781005

5:THE DEPUTY COMMISSIONER
MORIGAON

P.O. AND P.S. MORIGAON
DIST. MORIGAON
ASSAM
PIN 782105

6:THE FOREIGNERS TRIBUNAL NO. (1ST)
MORIGAON
ASSAM
DIST. MORIGAON
ASSAM
PIN 782105

7:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
P.O. AND P.S. MORIGAON
DIST. MORIGAON
ASSAM
PIN 782105

8:THE OFFICER IN CHARGE OF JAGIROAD POLICE STATION
P.O. JAGIROAD
DIST. MORIGAON
ASSAM
PIN 78240

Advocate for the Petitioner : MS. D GHOSH

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

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

JUDGMENT

Date : 06-04-2023

(AM Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 being the Union of India and respondent No.4, Mr. J. Payeng, learned counsel for the Home Department of Government of Assam being the respondent No.2, 6, 7 & 8, Mr. T. Pegu, learned counsel for the respondent No.3 being the Election Commission of India and Ms. U. Das, learned Advocate for the respondent No.5 being the

Deputy Commissioner, Morigaon.

2. The petitioner, namely, Subhash Ghosh @ Subhash Chandra Ghosh was referred to the Foreigners' Tribunal No.1, Morigaon for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of Case No.F.T. (C) 809/2006. The Tribunal rendered an opinion dated 09.01.2020, that the petitioner is a foreigner. Being aggrieved this Writ Petition is instituted.

3. The petitioner before the Writ Court relies upon the Voters List of 1966 of Kharupetia Town, Ward No.3 in the present Darrang District, which contains the name of Nityananda Ghosh, son of Mahananda at Sl. No.630 and that of Mankhushi Ghosh, wife of Nityananda at Sl. No.631 and both are shown to be residing in the same House No.151. To establish that he is the son of Nityananda Ghosh of Kharupetia Town, Ward No.3, the petitioner relies on a school certificate issued by the Headmaster of Dhaniram L.P. School, Kharupetia which contains the information that Subhash Chandra Ghosh is the son of Nityananda Ghosh of Village Kharupetia under the Dalgaon Police Station. If the information contained in the school certificate is correct the petitioner may have established that he is the son of Nityananda Ghosh of Kharupetia Town, Ward No.3 and accordingly would be a citizen.

4. But it is noticed that the Headmaster of the Dhaniram L.P. School, Kharupetia had not been examined. Although petitioner relies upon another school certificate issued by the Principal of Morigaon H.S. & M.P. School but it is noticed that the said school provides that Subhash Chandra Ghosh is the son of Nityananda Ghosh and inhabitant of Village Na-Khola in the then Nagaon District.

5. Instead of adopting a more complicated process of proving the shifting from Kharupetia in Darrang District to Na-Khola Village in the Morigaon District, the petitioner can discharge the burden under Section 9 of the Foreigners Act, 1946 if the Headmaster of Dhaniram L.P. School, Kharupetia is examined along with the original school records. If the

information contained in the original records shows that petitioner Subhash Chandra Ghosh is the son of Nityananda Ghosh of Village Kharupetia, the petitioner may have discharged his burden.

6. Accordingly the matter is remanded back to the Tribunal, to enable the petitioner to examine the Headmaster of Dhaniram L.P. School, Kharupetia as regards the school certificate, by producing the original records. The respondents in the Home Department may cross-examine the Headmaster as may be advised. The Home Department may also make a verification as to whether Subhash Chandra Ghosh is the son of Nityananda Ghosh of Kharupetia Town, Ward No.3 and that Subhash Ghosh @ Subhash Chandra Ghosh son of Nityananda Ghosh and the proceedee petitioner Subhash Chandra Ghosh are one and the same person. Upon the requirement being done, the reasoned order be passed by the Tribunal.

7. The petitioner to appear before the Tribunal on 26.05.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 09.01.2020, passed in case No.F.T. (C) 809/2006 and if it is against him, the consequence under the law may follow.

8. Till the reasoned order is passed, no coercive action be taken against the petitioner.

9. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant