

GAHC010082422019



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

Case No. : WP(C)/2602/2019

MASTAB ALI
S/O- LT A. GANI SK, VILL- JHALER ALGA PT-II, P.O. SOUTH GERAMARI, P.S.
GAURIPUR, DIST- DHUBRI, ASSAM, PIN- 783339

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY ITS SECY., DEPTT. OF HOME, NEW DELHI-01

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

3:THE CHIEF ELECTORAL OFFICER
ASSAM
DISPUR
GHY-6

4:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZEN
ASSAM
DISPUR
GHY-6

5:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN ASOKA ROAD
NEW DELHI-1

6:THE MEMBER
FOREIGNERS TRIBUNAL NO.5

DHUBRI
PIN- 783301

7:THE DISTRICT ELECTION OFFICER
DHUBRI
ASSAM
PIN- 783301

8:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. B J GHOSH

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

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

ORDER

14.08.2023

(AM Bujor Barua, J)

Heard Mr. T Sk., 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 as well as the Superintendent of Police (B) Dhubri and Mr. P Sarma, learned Government Advocate for the Deputy Commissioner, Dhubri.

2. The petitioner, namely, Mastab Ali was referred to the Foreigners Tribunal No.4th Dhubri for rendering an opinion as to whether he is a foreigner within the meaning of Foreigner Act, 1946 resulting in the registration of Case No.F.T-4/65/GPR/2018 corresponding to Reference IM(D)T Case No.2711/1998 wherein an opinion dated 06.02.2019 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 1966 of Jhalaralga Pt. II Mouza Gauripur in the present Dhubri district which contains the name of Gani Sheikh son of Esmail at Sl.No.246 and it is claimed Gani Sheikh is the father of the petitioner. The voters list of 1970 of village Jhalaralga Pt. II also contains the name of Gani Sheikh son of Esmail at Sl. No.292. Further reliance is placed on the voters of 1977 of village Jhalaralga Pt. II which contains the name of Goni Sheikh son of Ismail at Sl.No.129 and that of Achitan Bibi wife of Goni Sheikh at Sl.No.131, where both are shown to be residing in the same House No.27. Thereafter the petitioner relies upon the voters list of 1997 of village Jhalaralga Pt. II containing the name of Mostab Ali Sheikh, son of A Goni Sk at Sl.No.53 along with Achitan Bewa wife of A Goni at Sl.No.55 where both are shown to be residing in the same House No.21. It is claimed that Mostab Ali Sheikh of the 1997 voters list is the petitioner himself. As the name of Mostab Ali Sheikh and Achitan Bewa appear together in the voters list of 1997 of village Jhalaralga Pt. II and the name of Achitan Bibi and Goni Sheikh appear together in the voters list of 1977 of the same village Jhalaralga Pt. II, where the name of Goni Sheikh appears in the voters lists of 1966 and 1970 of

village Jhalaralga Pt. II, it is claimed that the burden under Section 9 of the Foreigners Act 1946 has been discharged by the petitioner to prove that he is a citizen of India.

5. In the circumstance, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the complete and continuous voters list from the years 1966 up to 1997 of village Jhalaralga Pt. II.

6. The respondents in the Home Department may also make their own verification on the aforesaid aspect, more particularly, as to whether Mostab Ali Sheikh of the 1997 voters list of village Jhalaralga Pt. II and the writ petitioner/proceedee Mastab Ali are one and the same person and submit a report before the Tribunal, if so advised.

7. Accordingly, the petitioner shall appear before the Tribunal on 15.09.2023.

8. 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 06.02.2019 of the Foreigners Tribunal No.4th Dhubri in Case No.F.T-4/65/GPR/2018 corresponding to Reference IM(D)T Case No.2711/1998 and if it is against the petitioner, consequential action under the law shall follow.

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

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

11. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant