

GAHC010093372019



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

Case No. : WP(C)/2844/2019

ROFIKUL HOQUE
S/O. MANIK ALI, VILL. FULKUMARI, P.S. GAURIPUR, P.O. KHUDIMARI,
DIST. DHUBRI, ASSAM, PIN-783331.

VERSUS

THE UNION OF INDIA AND 8 ORS.
REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI-110001.

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI
ASSAM-781006.

3:THE DY. COMMISSIONER OF POLICE (B)

KAMRUP (M)
PANBAZAR
UNDER GUWAHATI POST OFFICE
DIST. KAMRUP (M)
ASSAM-781001.

4:THE DY. COMMISSIONER

KAMRUP (M)
OFFICE OF THE DY. COMMISSIONER
PANBAZAR
P.O. GUWAHATI
DIST. KAMRUP (M)

ASSAM-781001.

5:THE DY. COMMISSIONER

DHUBRI
OFFICE OF THE DY. COMMISSIONER
WARD NO.1
BORO BAZAR
DIST. DHUBRI
ASSAM-783301.

6:THE FOREIGNERS TRIBUNAL NO.2
KAMRUP (M) AT GUWAHATI
HEDYATPUR
DIST. KAMRUP (M)
ASSAM-781003.

7:THE OFFICER IN CHARGE

DISPUR POLICE STATION DIST. KAMRUP (M)
ASSAM-781005.

8:THE STATE COORDINATOR

OFFICE OF THE STATE COORDINATOR
NRC ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM-781005.

9:THE ELECTION COMMISSIONER OF INDIA

ASHOKA ROAD
NEW DELHI-110001

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

ORDER

Date : 22.03.2023

(A.M. Bujor Barua, J)

Heard Ms. N. Deka, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 8, 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, 6 and 7, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondents No. 4 and 5, being the Deputy Commissioner, Kamrup(M) and the Deputy Commissioner, Dhubri respectively and Mr. A. Ali, learned counsel for the respondent No. 9, being the Election Commission of India.

2. The petitioner Rofikul Hoque was referred to the Foreigners' Tribunal No. 2, Kamrup(M) 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 and accordingly F.T. Case No. 1287/2015 was registered. The Tribunal rendered its opinion dated 07.03.2019 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1961 of village Fulkumari, Mouza Gauripur in the Dhubri district wherein at Sl. No. 183 the name of Nudu Sk. son of Kalemamud and also the voters' list of 1985 of village Fulkumari, Mouza Gauripur in the Dhubri district wherein at Sl. No. 766 the name of Manik Sheikh son of Nudu and at Sl. No. 767 the name of Sher Ali son of Nudu appear. The petitioner further relies upon the voters' list of 2015 of

village Fulkumari, Mouza Gauripur in the Dhubri district wherein at Sl. No. 998 the name of Manik Ali son of Nudu Sheikh and at Sl. No. 1002 the name of Rofikul Hoque son of Montaz Ali appear and both are shown to be residing in the same house No. 223.

4. As the petitioner could establish that Nudu Sheikh is a citizen of India by virtue of his name appearing in the voters' list of 1961 and that Manik Sheikh is also a citizen of India being the son of Nudu Sheikh as per the voters' list of 1985 and the name of the petitioner appears along with Manik Ali in the voters' list of 2015 of village Fulkumari, Mouza Gauripur in the Dhubri district, a prima facie indication is available that the petitioner may be a citizen of India.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Kamrup(M) to examine the authenticity and correctness of the aforesaid documents and pass a reasoned order as to whether the materials indicated above conclusively indicate that the petitioner is a citizen of India. To facilitate the process, the petitioner may produce the complete voters' list of the intervening years of village Fulkumari, Mouza Gauripur in the Dhubri district. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 07.03.2019 in F.T. Case No. 1287/2015 and if it is against the petitioner, consequences under law shall follow.

6. The petitioner may also produce any other relevant document, if so advised. The State authorities in the Home Department through the Superintendent of Police (B), Kamrup(M) shall also make a verification of the authenticity of the voters' lists as well as any further verification that the authorities may deem appropriate. The petitioner to appear before the Tribunal on 28.04.2023. 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

J U D G E

Comparing Assistant