

GAHC010114862023



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

Case No. : WP(C)/3062/2023

BAHAR ALI
S/O- LATE KHATTU SEIKH,
A RESIDENT OF VILL. NO. 3 SHYAMPUR,
P.O.- DALGAON,
P.S.- SHYAMPUR, DIST.- DARRANG,
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
TO BE REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
DEPARTMENT OF HOME AFFAIRS,
NEW DELHI, INDIA.

2:THE STATE OF ASSAM
TO BE REPRESENTED BY THE GOVT. OF ASSAM

DEPARTMENT OF HOME
DISPUR

GUWAHATI-6.

3:THE ELECTION COMMISSION OF INDIA
TO BE REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF
INDIA

NIRVACHAN ASHOKA ROAD

NEW DELHI
INDIA.

4:THE NATIONAL REGISTER OF CITIZEN

TO BE REPRESENTED BY THE STATE CO-ORDINATOR

ASYUT PLAZA
BHANGAGARH

KAMRUP(M)
ASSAM.

5:THE SUPERINTENDENT OF POLICE (B)
DARRANG
DISTRICT- DARRANG
ASSAM.

6:THE DEPUTY COMMISSIONER
DARRANG
DIST.- DARRANG
ASSAM

Advocate for the Petitioner : MR. MAI HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

Date : 08.06.2023
(AM Bujor Barua, J)

Heard Mr. MAI Hussain, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no.1 and 4 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2 and 5 being the authorities under the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 6 being the Deputy Commissioner, Darrang.

2. The petitioner Bahar Ali, S/O Khattu Sheikh, a resident of village No. 3 Shyampur P.O. Dalgaon, P.S. Shyampur in the Darrang district was proceeded in the Foreigners' Tribunal No. 1, Mangaldai, Darrang in F.T. Case No. 1172/12. F.T. Case No. 1172/12 was registered as State of Assam vs. Md. Baharul Islam, S/O Lt. Khutlu Sheikh of village No. 2 Salaipara, Mangaldai in the Darrang district.

3. We have perused the notice issued by the Tribunal in F.T. Case No. 1172/12 which is addressed to Baharul Islam, S/O Khudhulu Sheikh of Salaipara (the copy of the notice provided is not very legible in respect of the name of the village).

4. The Tribunal proceeded with the matter and passed the final order dated 19.09.2019 which apparently appears to be more in the nature of an ex-parte order in the absence of the further presence of the petitioner before the Tribunal after filing of the written statement etc.

5. In the writ proceeding a stand is taken that the petitioner is in fact Bahar Ali, S/O Khattu Sheikh of village No. 3 Shyampur in the Darrang district and not Baharul Islam, S/O Lt. Khutlu Sheikh of village No. 2 Salaipara in the Darrang district. A further stand is taken that the notice of the Tribunal addressed to Baharul Islam, S/O Khudhulu Sheikh of Salaipara village had wrongly been served on Bahar Ali, S/O Khattu Sheikh of village No. 3 Shyampur in the Darrang district. We cannot dispute the identity claimed by the petitioner that he is Bahar Ali, S/O Khattu Sheikh of village No. 3 Shyampur in the Darrang district.

6. A reading of the notice of the Tribunal makes it discernable that the reference as well the notice was in respect of Baharul Islam, S/O Khutlu Sheikh of No. 2 Salaipara village in the Darrang district.

7. Ms. A Verma, learned counsel for the Home Department of Government of

Assam has raised an objection stating that the police authorities as well as the Tribunal makes an enquiry and registers a reference on the basis of the information provided by the person concerned against whom the proceeding was initiated and therefore, it has to be understood that it was the petitioner himself who may have given the wrong name or wrong identity of himself.

8. Mr. MAI Hussain, learned counsel for the petitioner on the other hand makes a statement that the petitioner Bahar Ali, S/O Khattu Seikh of village No. 3 Shyampur in the Darrang district was not enquired into by the police authorities.

9. Instead of venturing into the aforesaid dispute as to whether the person enquired had given the wrong name to the enquiry authority or the enquiry was not conducted against the petitioner, we are of the view that the core purpose and requirement of the proceeding under Foreigners' Tribunal is to determine the citizenship of the petitioner who is referred. As the notice was issued to Bahar Ali, S/O Khattu Seikh of village No. 3 Shyampur although it may have been addressed to Baharul Islam, S/O Khutlu Seikh of No. 2 Salaipara village in the Darrang district but from the conduct of the parties it appears that the intention was to carry forward a reference against Bahar Ali, S/O Khattu Seikh of village No. 3 Shyampur of Darrang district.

10. If it is so, we are of the view that the interest of justice of both the parties would be met if the Superintendent of Police (Border), Darrang makes a reference to the Tribunal in the name of Bahar Ali, S/O Khattu Seikh of village No. 3 Shyampur of Darrang district and proceed against him for determination of his citizenship. Accordingly, the Superintendent of Police (Border), Darrang is directed to make a reference in the name of Bahar Ali, S/O Khattu Seikh of village No. 3 Shyampur of Darrang district and upon it being done, the Tribunal

may proceed as per law.

11. As regards the proceeding that had been initiated against Baharul Islam, S/O Khutlu Sheikh of No. 2 Salaipara village of Darrang district, the authorities may verify as to whether any person with separate identity other than Bahar Ali, S/O Khattu Sheikh of village No. 3 Shyampur of Darrang district do exist and if yes, may serve notice on the said person and proceed against him. On the other hand, if the enquiry reveals that the name of Baharul Islam, S/O Khutlu Sheikh of No. 2 Salaipara village of Darrang district was incorrectly incorporated, which may have been because of a wrong name being given by the person who was enquired or because of any other reason and no such person do exist requiring the proceeding, the said case may accordingly be closed by observing as indicated above after submission of a report by the Superintendent.

12. To facilitate the process, the writ petitioner Bahar Ali, S/O Khattu Sheikh of village No. 3 Shyampur of Darrang district shall appear before the Superintendent of Police (Border), Darrang on 26.06.2023 and upon doing so, if the Superintendent intends to proceed against the petitioner the petitioner shall also give necessary materials and documents to the Superintendent so that his identity as well as the place where he can be located would be known to the Superintendent. The Superintendent to also conduct an enquiry as to whether Bahar Ali, S/O Khattu Sheikh of village No. 3 Shyampur of Darrang district and Baharul Islam, S/O Khutlu Sheikh of No. 2 Salaipara village of Darrang district are one and the same person. If it is so, appropriate action under the law be taken on the offence of impersonation.

13. A copy of this order be provided to Ms. A Verma, learned counsel for the Home Department of Government of Assam.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant