

GAHC010120372017



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

Case No. : WP(C)/142/2017

ABDUL MANNAB ALI @ ABDUL MANNAB @ ABDUL HANIF
S/O ATABUDDIN SHEIKH R/O VILL- SADARPARA, P.S. KRISHNAI DIST.
GOALPARA, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TRILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER

GOALPARA
P.O. and P.S. GOALPARA
DIST. GOALPARA
ASSAM.

4:ELECTORAL REGISTRAR OFFICER

ERO
36 DUDHNOI ST LEGISLATIVE ASSEMBLY CONSTITUENCY
GOALPARA
ASSAM.

5:THE SUPERINTENDENT OF POLICE B
GOALPARA

P.O. and P.S. GOALPARA
DIST. GOALPARA
ASSAM

Advocate for the Petitioner : MR.A R SIKDAR

Advocate for the Respondent : ASSTT.S.G.I.R1

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

14.03.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel, appearing for the respondent No.1; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 5; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent No.4 and Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Abdul Mannab Ali @ Abdul Mannab had been noticed by the Foreigners' Tribunal No.2, Goalpara as per the notice dated 16.05.2016 vide Case No.FT(2) 117/K/2016. It is noticed that the said notice had been issued in the name of Md. Abdul Hanif, but it was served on the petitioner Abdul Mannab Ali. When Abdul Mannab Ali appeared before the Tribunal and through his materials sought to discharge the burden that he is a citizen of India, the Tribunal renders the opinion dated 30.09.2016 that the petitioner by producing the documents related to Abdul Mannab Ali had 'tried to mislead the Tribunal by adducing documents which are not genuinely his own'. The Tribunal thereupon arrived at a conclusion that the notice was served in the name of Abdul Hanif as per the voters list of 1997 of Sardarpara. But however in the voters list of 2005 produced by the petitioner showing him as the 'D' voter, the name appeared as Abdul Mannab Ali.

3. If the Tribunal had issued the notice in the name of Abdul Hanif but served it on Abdul Mannab Ali and when Abdul Mannab Ali appears before the Tribunal by producing documents related to Abdul Mannab Ali to discharge the burden that Abdul Mannab Ali is a citizen of India, it would be absurd on the part of the Tribunal to dismiss his claim by arriving at a conclusion that the petitioner Abdul Mannab Ali is trying to mislead the Tribunal by producing documents which are not genuinely his own as because the notice was served to Abdul Hanif.
4. Because of the aforesaid unacceptability, both the notice dated 16.05.2016 vide Case No.FT(2) 117/K/2016 in the name of Abdul Hanif as well as the opinion dated 30.09.2016 rendered by the Foreigners' Tribunal No.2, Goalpara, after serving notice on the petitioner Abdul Mannab Ali, are set aside. If the Tribunal is of the view that Abdul Mannab, S/O Atabuddin Sheikh of Sardarpara is required to be proceeded again, the Tribunal may issue appropriate notice as per the correct name of the proceedee and thereafter proceed against the petitioner, if so advised. If the Tribunal is of the view that the requirement of proceedee against Abdul Hanif, it may do so but by serving notice on Abdul Hanif and not on any other person.
5. Send back the LCR.
6. The petitioner is allowed, as indicated above.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant