

GAHC010124642019



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

Case No. : WP(C)/3671/2019

SONAULLAH @ MD. SANA ULLAH
PERMANENT R/O- VILL- KALAHIKASH, P.S- BOKO, PIN- 781136, DIST-
KAMRUP, ASSAM

VERSUS

THE UNION OF INDIA AND 8 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI, PIN- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWHATI- 781006

4:THE DEPUTY COMMISSIONER
KAMRUP (R)
PIN- 781031

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP
PIN- 781031
ASSAM

6:STATE COORDINATOR
NRC
BHANGAGARH

GUWAHATI- 5

7:DEFENCE SECRETARY
MIN OF DEFENCE
NEW DELHI
SOUTH BLOCK
110011

8:GENERAL OFFICER COMMANDING IN CHIEF
EASTERN COMMAND
INDIAN ARMY
FORT WILLIAM
KOLKATA- 700021

9:CHANDRAMAL DAS
FORMER SI (B)
BOKO POLICE STATION- 78112

Advocate for the Petitioner : MR H R A CHOUDHURY

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

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

ORDER

Date : 29.03.2023
(AM Bujor Barua, J)

Heard Mr. AW Aman, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1, 6, 7 and 8 being the authorities under the Union of India and NRC respectively, Mr. A Verma, learned counsel for the respondents No. 3 and 5 being the authorities under the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the respondent no. 2 being the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 4 being the Deputy Commissioner, Kamrup (R).

2. The petitioner Md. Sonaullah @ Sana Ullah had been referred to the Foreigners Tribunal No. 2, Kamrup (R) for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of B.F.T. Case No. 1978/2016 corresponding to F.T. Case No. 737/08. An opinion dated 23.05.2019 had been rendered by the Tribunal declaring the petitioner to be a foreigner.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, in order to enable the petitioner to discharge the burden under Section 9 of the Foreigners' Act, 1946, we also required the respondent Election Commission to produce the complete voters' lists from 1966 to 2005 of village Kolohi Kam to enable the Court to examine as to whether petitioner Md. Sonaullah @ Sana Ullah is the son of Mohammad Ali whose name appears in the voters' list of 1966 of village Kolohi Kam at Sl. No. 27.

5. In response thereof, Election Commission has produced the complete voters' lists from 1966 to 2005 of the said village. Upon examination of the voters' list of 1966 of village Kolohi Kam it is noticed that the name of Mohammad Ali, S/O Setu is at Sl. No. 27 and that of Banu Bibi, W/O Mohammad Ali at Sl. No. 28. The voters' list of 1970 of village Kolohi Kam contains the name Mohammad Ali, S/O Setu at Sl. No. 39 and that of Banu Bibi, W/O Mohammad at Sl. No. 40 and that of Asdul Karim and Hanif Ali being sons of Mohammad Ali at Sl. Nos. 41 and 43. The voters' list of 1977 of village Kolohi Kam contains the name of Sonaullah Sk., S/O Mohammad Ali at Sl. No. 48 and that of Banu Bibi, W/O Mohammad Ali at Sl. No. 44 and that of Hanif Ali, S/O Mohammad Ali at Sl. No. 45 and all of them are shown to be residents of house no. 16.

6. As Md. Sonaullah @ Sana Ullah has established that he is the son of

Mohammad Ali whose name appears in the voters' lists of 1960 and 1970 in respect of village Kolohi Kam, therefore, it has to be concluded that he has discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is a citizen of India. But the 1989 voters' list shows the name of the village to be Kolohikash. The learned counsel for the Election Commission of India has clarified by obtaining information from the departmental authorities that Kolohi Kam and Kolohikash is the same village and that from 1989 the village Kolohi Kam happened to be called as Kolohikash.

7. It is noticed that the notice of the Tribunal required Md. Sonaullah, S/O Mohamad Ali of village Kolohikash to appear before the Tribunal on 04.09.2018. As the proceedee in the present case is Md. Sonaullah, S/O Mohammad Ali of village Kolohikash and as indicated above Sonaullah Sk., S/O Mohammad Ali of village Kolohikash could establish his citizenship by virtue of the voters' lists of 1966, 1970 and 1977 of village Kolohi Kam, we accordingly declare the petitioner Md. Sonaullah @ Sana Ullah, S/O Mohammad Ali of village Kolohikash to be a citizen of India.

8. Accordingly, the petitioner shall be entitled to all the rights and liberties as a citizen of India as may be admissible under the law.

Send back the LCR.

Writ petition stands allowed in the above terms.

JUDGE

JUDGE

Comparing Assistant