

GAHC010126792017



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

Case No. : WP(C)/2195/2017

ALI HUSSAIN SK
S/O- LATE OMAR ALI SK@ OMAR ALI, VILL- VIDYARDABRI PART-IV, P.S-
GOLOKGANJ, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
MINISTRY OF HOME AFFAIRS, UNION OF INDIA, NEW DELHI

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER OF DHUBRI DISTRICT
DHUBRI
P.O
P.S AND DIST- DHUBRI
ASSAM

4:THE SUPERINTENDENT OF POLICE
DHUBRI
P.O
P.S AND DIST- DHUBRI
ASSA

Advocate for the Petitioner : MR.A T SARKAR

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

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

ORDER

Date : 13.06.2023

(A.M. Bujor Barua, J)

Heard Mr. A.T. Sarkar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1, being the Union of India. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department and Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Dhubri.

2. The petitioner Ali Hussain Sk was referred to the Foreigners' Tribunal No. 8, Dhubri for rendering an opinion as to whether he is a foreigner within its meaning as per the provisions of the Foreigners Act, 1946 and accordingly F.T. Case No. 8/125/GKJ/2016 corresponding to F.T. Case No. 6494/GKJ/2011 was registered. The Tribunal had rendered its opinion dated 16.03.2017 arriving at its conclusion that the petitioner is a foreigner as per the provisions of the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Dighaltari, PS Golakanj in the Goalpara district which contains the name of Omar Ali Sheikh son of Panaullah at Sl. No. 534. It is claimed that Omar Ali Sheikh of the voters' list of 1966 of village Dighaltari is the father of the petitioner. To substantiate the same, reliance is placed upon a certificate issued by the President of Sonakhuli Gaon Panchayat which is also countersigned by its Secretary which contains the information that Ali Hussain Sk is the son of late Omar Ali of village Bidyardabri Pt. IV. To substantiate the contents of the

certificate dated 25.10.2016, the Secretary of the Sonakhuli Gaon Panchayat has filed an affidavit before the Court stating that the petitioner made an application in the office Sonakhuli Gaon Panchayat seeking for a certificate and after receiving the application, the Secretary went to visit the village of the petitioner at Bidyardabri Pt. IV for a field verification and it is stated that the information contained in the certificate is on the basis of such knowledge that the Secretary obtained upon his field visit.

4. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 8, Dhubri to examine the aforesaid voters' list of 1966 of village Dighaltari containing the name of Omar Ali Sheikh son of Panaullah at Sl. No. 534 as well as the evidence rendered by the Secretary of Sonakhuli Gaon Panchayat as regards the information contained in the certificate. Upon appearance, the respondents in the Home Department shall cross-examine the Secretary of Sonakhuli Gaon Panchayat to extract the veracity of the information contained therein, more particularly his stand that he had made a personal visit to the house of the petitioner at village Bidyardabri Pt. IV. The petitioner to also produce any relevant material before the Tribunal that the family of Omar Ali Sheikh whose name appears in the voters' list of 1966 of village Dighaltari had later on shifted to village Bidyardabri Pt. IV. The respondents in the Home Department through the Superintendent of Police(B), Dhubri may also make their own verification on the correctness and authenticity, firstly of the evidence rendered by the Secretary of Sonakhuli Gaon Panchayat and secondly, on the factual aspect as to whether the family of Omar Ali Sheikh had shifted to village Bidyardabri Pt. IV from village Dighaltari and thereafter submit a report before the Tribunal.

5. Upon doing the needful, the Tribunal to pass a reasoned order. If the

reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 16.03.2017 in F.T. Case No. 8/125/GKJ/2016 corresponding to F.T. Case No. 6494/GKJ/2011 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 17.07.2023. 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