

GAHC010135402019



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

Case No. : WP(C)/4187/2019

ABDULLA SHEIKH
S/O- BASTULLA SHEIKH, R/O- VILLAGE- GASPARA, P.S. AND DIST.-
DHUBRI, ASSAM. PIN- 783324.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI.

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

3:THE DEPUTY COMMISSIONER
DHUBRI
P.O. AND DIST.- DHUBRI
ASSAM
PIN- 783301.

4:THE SUPERINTENDENT OF POLICE (B)

P.O. AND DIST.- DHUBRI
ASSAM
PIN- 783301.

5:THE STATE CO-ORDINATOR
NRC
ASSAM

BHANGAGARH
GUWAHATI-05.

6:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

Date : 31.03.2023

(A.M. Bujor Barua, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 5, 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 and 4, being the authorities in the Home Department; Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Dhubri and Mr. T. Pegu, learned counsel for the respondent No. 6, being authorities in the Election Commission of India.

2. The petitioner Abdulla Sheikh was referred to the Foreigners' Tribunal No. 1, Dhubri 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. 5406/D/2011 was registered. The Tribunal rendered its opinion dated 30.04.2019 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 1966 of

village Gaspara, P.S. Dhubri in the Dhubri district wherein at Sl. No. 332 the name of Mokshed Ali Munsi son of Gaher Sheikh and at Sl. No. 333 the name of Ahitan Bibi wife of Mokshed Ali appear and both reside in the same house bearing No. 70/1. The names of Mokshed Ali Munsi and Ahitan Bibi also appear in the voters' list of 1970 of village Gaspara. It is stated that both Mokshed Ali Munsi and Ahitan Bibi died in the years 1975 and 1974 respectively. The voters' list of 1977 of village Gaspara contains the name of Bastulla Sheikh son of Moksed at Sl. No. 61 and that of Surja Bibi wife of Bastulla at Sl. No. 62. The voters' lists of 1985, 1989 and 1997 of village Gaspara also contain the names of Bastula Sheikh and Surja Bibi. The voters' list of 2005 of village Gaspara contains the name of Bastulla Sheikh son of Moksed Ali Munshi at Sl. No. 312, Surjaya Bhan Bibi wife of Bastulla Sheikh at Sl. No. 313 and that of Abdulla Sheikh son of Bastulla Sheikh at Sl. No. 314 and all of them are understood to be residing in the same household bearing No. 103.

4. The petitioner claims that he is Abdulla Sheikh son of Bastulla Sheikh of the voters' list of 2005 of village Gaspara and therefore being the son of Bastulla Sheikh who again is the son of Mokshed Ali Munsi, his citizenship is established.

4. In the circumstance, we remand the matter back to the Foreigners' Tribunal No. 1, Dhubri to examine all the aforesaid voters' lists. The petitioner to also produce the complete voters' list of the aforesaid years before the Tribunal. The State authorities in the Home Department through the Superintendent of Police(B), Dhubri to also make an enquiry in the house of Bastulla Sheikh of village Gaspara and find out as to whether Abdulla Sheikh is his son and whether Abdulla Sheikh of the voters' list of 2005 and the proceedee Abdulla Sheikh are one and the same person. Upon such examination, 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 30.04.2019 in F.T. Case No. 5406/D/2011 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 10.05.2023. 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