

GAHC010145702017



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

Case No. : WP(C)/6551/2017

BACHU ALI SHEIKH
S/O- LATE DHOLAMUDDIN SK @ DHOLA SK, VILL- TOLLI PT-I, P.O-
AGOMONI, P.S- AGOMONI, DIST- DHUBRI, ASSAM, PIN- 783335

VERSUS

THE UNION OF INDIA and 8 ORS
REP. BY THE MIN OF HOME AFFAIRS, GOVT OF INDIA, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY CHIEF SECRETARY TO THE GOVT OF ASSAM
DISPUR
GHY- 06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
HOME DEPARTMENT
DISPUR
GHY- 06

4:THE DIRECTOR OF GENERAL POLICE
ASSAM
ULUBARI
GUWAHATI- 05

5:THE SUPERINTENDENT OF POLICE B
DHUBRI
ASSAM
PIN- 783301

6:THE SUPERINTENDENT OF POLICE
DHUBRI

ASSAM
PIN- 783301

7:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
PIN- 783301

8:THE OFFICER-IN-CHARGE
AGOMONI POLICE STATION
DIST- DHUBRI
ASSAM
PIN- 783335

9:THE ELECTOR REGISTRATION OFFICER
NO.25 GOLAKGANJ LAC
DIST- DHUBRI
ASSAM
PIN- 78333

Advocate for the Petitioner : MDI H KHAN

Advocate for the Respondent : ASSTT.S.G.I.Res no.1

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

26.04.2023

(A.M. Bujor Barua, J)

Heard Mr. MU Mondal, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, Mr. A Kalita, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Mr. PK Medhi, learned counsel for the Deputy Commissioner, Dhubri.

2. The petitioner Bachu Ali Sheikh had been referred to the Foreigners Tribunal No. 10, Dhubri 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 FT Case No.(10)/AGM/542/2017 (reference FT case No. 4537/GKJ/II), wherein an opinion dated 22.09.2017 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1966 of village Beluguri Part-I, which contains the name of Dholamuddin son of Andharu Sk at serial No. 192 and that of Rabia Bibi wife of Dholamuddin at serial No. 194 and both of them are shown to be residing in the same house No. 42. The petitioner also relies on the voters list of 2010 of village Tolli Part-I in the Dhubri district, which contains the name of Abiya Bewa wife of Dholamuddin Sk at serial No. 171 and that of Bachchu Ali Sk son of Dholamuddin Sk at serial No. 172. The petitioner states that he had shifted from village Beluguri Part-I to village Tolli Part-I and accordingly by establishing a link with Dholamuddin Sk of the voters list of 1966 of village Beluguri Part-I, claims that he is a citizen of India.

4. Prima-facie, we have noticed that the voters list of 1966 of village Beluguri Part-I contains the name of Dholamuddin and Rabia Bibi wife of Dholamuddin, whereas the voters list of 2010 of village Tolli Part-I also contains the name of Abiya Bewa wife of Dholamuddin Sk and Bachchu Ali Sk son of Dholamuddin Sk and further Abiya Bewa and Bachchu Ali Sk appears to be residing in the same house.

5. Considering the existence of three names of the same family in the voters list of 1966 of village Beluguri Part-I and in the voters list of 2010 of village Tolli

Part-I, the matter is remanded back to the Tribunal to enable the petitioner to produce any relevant material as may be available to establish that the family had shifted from village Beluguri Part-I to village Tolli Part-I and thereafter pass a reasoned order thereon. In doing so, the Tribunal may also take into consideration the downward voters list of village Beluguri Part-I after the date of shifting as well as the upward voters list of village Tolli Part-I prior to the shifting to examine as to whether the name of the persons appeared in the two voters lists either after the shifting from village Beluguri Part-I or before the shifting in village Tolli Part-I. The respondents in the Home Department may also make their own verification as to whether Dholamuddin Sk of the voters list of 1966 of village Beluguri Part-I and Dholamuddin Sk referred in the voters list of 2010 of village Tolli Part-I are one and the same person.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 22.09.2017 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioner shall appear before the Foreigners Tribunal No. 10, Dhubri on 06.06.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

8. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant