

GAHC010166622018



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

Case No. : WP(C)/5407/2018

ABUSAMA @ ABUSAMA SK.
S/O- TASER ALI, R/O- VILL- JAMDUAR PART-II, P.S. CHAPAR, DIST-
DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S.ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL (7TH)
DHUBRI
AT BILASIPARA
P.O. AND P.S. BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

6:THE DY. COMMISSIONER
DHUBRI
P.O. AND P.S. DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

7:THE SUPERINTENDENT OF POLICE (BORDER)
DHUBRI
P.O. AND P.S. DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

8:THE OFFICER-IN-CHARGE
CHAPAR P.S.
P.O. CHAPAR
DIST- DHUBRI
ASSAM
PIN- 78337

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

Date : 02-08-2023

(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 & 4 being the Union of India, Ms. A. Verma, learned Counsel

appearing for the Home Department, Government of Assam for the respondent No.2, 5, 7 & 8, Mr. A.I. Ali, learned counsel for the respondent No.3 being the Election Commission of India and Ms. K. Phukan, learned Advocate for the respondent No.6 being the Deputy Commissioner, Dhubri.

2. The petitioner Abusama @ Abusama Sk. had been referred to the Foreigners' Tribunal No.7, Dhubri for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T. 7th Dhubri Case No.97/CPR/16. The Tribunal rendered an opinion dated 06.02.2017, declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. Firstly it is taken note that the proceeding in the Tribunal was initiated against Abusama son of Taser Ali of Village Jamduar Part-II under Chapar Police Station in Dhubri District. The petitioner took a stand that Oser Ali son of Naseruddin at Sl. No.88 of the 1966 Voters List of Village Bakpara Dinalga Part-I is the father of the petitioner and Nurjan Bibi wife of Taser is the mother. It is clarified by the petitioner that the name ought to have been Taser Ali but it was wrongly spelt as Oser Ali. The 1970 Voters List relied upon also contains the same information as Oser Ali at the Sl. No.68 and Nurjan Bibi wife of Taser at Sl. No.69. Thereupon reliance placed upon the Voters List of 1997 of Village Sontoshpur which contains the name of Nurjan Bewa wife of Taser at Sl. No.395 and that of Abusama Sk son of Taser at Sl. No.396. It is claimed that Abusama Sk at Sl. No.396 is the petitioner himself and Nurjan Bewa wife of Taser is his mother, whose name also appeared in the earlier Voters Lists of 1966 and 1970. Thereupon reliance is placed upon the Voters List of 2005 of Village Jamduar Part-II which contains the name of Abusama at Sl. No.855.

4. A stand was taken that Taser Ali of 1966 and 1970 Voters Lists of Village Bakpara Dinalga Part-I, who was wrongly spelt of Oser Ali instead, had later on shifted to Village Sontoshpur, resulting in the name of Nurjan Bewa wife of Taser, appearing in the Voters Lists of 1997 of the said village and subsequent thereto the family shifted to Village Jamduar Part-II, resulting in the name of Abusama appearing in the Voters List of 2005 of Village Jamduar Part-II.

5. To examine the authenticity of such stand taken by the petitioner, we required the

Election Commission to produce the complete as well as the upward and downward Voters Lists of the three villages to enable an examination as to whether the name of Nurjan Bewa was discontinued in the original Village Bakpara Dinalga Part-I after the alleged shifting and whether her name could be found in the earlier Voters List of Village Sontoshpur and also whether after shifting to Village Jamduar Part-II the name was discontinued at Santoshpur and whether the name could be found in the Voters Lists of Village Jamduar Part-II prior to the shifting.

6. Accordingly Mr. A.I. Ali, learned counsel for the Election Department has produced the complete Voters Lists of the three villages as well as the upward and downward Voters Lists of the respective years when the shiftings are alleged to have taken place.

7. Reading of the complete Voters Lists makes it discernable that the name of Oser Ali along with Nurjan appeared in the Voters Lists of 1966 of Village Bakpara Dinalga Part-I at Sl. No.88 and 89 respectively and their names also appeared in the Voters List of 1970 of Village Bakpara Dinalga Part-I at Sl. No.68 and 69 respectively. But the Voters List of 1997 of Village Bakpara Dinalga Part-I does not contain their names, which prima facie may be an indication that the family may have shifted out from the Village Bakpara Dinalga Part-I. In the Voters List of 1989 of Village Santoshpur the name of Nurjan Bewa appears at Sl. No.417 along with Abusama Sk at Sl. No.420.

8. It is claimed that Taser Ali in the meantime died. But be that as it may, the Voters Lists prior to 1989 of Village Sontoshpur did not contain the name of Nurjan Bewa wife of Taser and Abusama son of Taser. Similarly the Voter Lists subsequent to 1997 of Village Sontoshpur also do not contain the names of Nurjan Bewa and Abusama and the Voter Lists of Village Jamduar Part-II prior to year 2005 also did not contain the name.

9. In view of the above, as the names were discontinued in the Voters Lists of the villages from where the shifting had taken place and the names did not appear in the Voters Lists of the village prior to the shifting having taken place, a prima facie conclusion can be drawn regarding the claim of the shiftings of the family of the petitioner.

10. In view of above, the matter is remanded back to the Tribunal to examine the complete Voters Lists, both upward and downward of the three villages of the respective

years and pass a reasoned order.

11. The respondents in the Home Department to make their own verification as to whether Abusama of the Voters List of 2005 of Village Jamduar Part-II and the petitioner proceedee Abusama @ Abusama Sk., are one and the same person.

12. The petitioner to appear before the Tribunal on 28.08.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 06.02.2017, passed in F.T. 7th Dhubri Case No.97/CPR/16 and if it is against him, the consequence under the law may follow.

13. Till the reasoned order is passed, no coercive action be taken against the petitioner.

14. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant