

GAHC010169242018



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

Case No. : WP(C)/5295/2018

MD. LAL CHAN ALI SK.
S/O- LT HARAN ALI SK, VILL- JHALER ALGA PT-I, PO SOUTH GERAMARI,
P.S. GAURIPUR, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY ITS SECY., DEPTT. OF HOME, NEW DELHI-1

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

3:THE CHIEF ELECTORAL OFFICER
ASSAM
DISPUR
GHY-6

4:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZEN
ASSAM
DISPUR
GHY-6

5:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN ASOKA ROAD
NEW DELHI-1

6:THE MEMBER

FOREIGNERS TRIBUNAL NO.5
DHUBRI
PIN- 783301

7:THE DISTRICT ELECTION OFFICER
DHUBRI
ASSAM
PIN- 783301

8:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. I ALAM

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

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

ORDER

Date : 05.06.2023
(AM Bujor Barua, J)

Heard Mr. I Alam, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2, 6 and 8 being the authorities under the Home Department of the Government of Assam, Mr. AI Ali, learned counsel for the respondents no. 3 and 5 being the authorities under the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 7 being the District Election Officer, Dhubri.

2. The petitioner Lal Chan Ali Sk. had been referred to the Foreigner's Tribunal No. 5, 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 Case No. FT-5/GPR/559/2017. An opinion dated 05.06.2018 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, the petitioner relies upon the voters' list of 1966 of village 130 Jhaler Alga Pt-I which contains the name of Omar Ali Bepari, S/O Shanu Bepari at Sl. No. 105 and that of Jamiran Bibi, W/O Omar Ali at Sl. No. 106. The petitioner thereupon relies upon the voters' list of 1989 of village 130 Jhaler Alga Pt-I which contains the name of Haran Ali, S/O Omar at Sl. No. 317 as well as the voters' list of 1997 of village 126 Jhaler Alga which contains the name of Haran Ali Sheikh, S/O Omar Ali at Sl. No. 827 and that of Lalchan Ali Sheikh, S/O Haran Ali at Sl. No. 829. It is claimed that Omar Ali Sheikh is the grandfather of the petitioner and Haran Ali is the father and as the name of Haran Ali Sheikh and Lalchan Ali Sheikh appears together in the voters' list of 1997 of village 126 Jhaler Alga, therefore, the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946 to prove that he is a citizen.

5. It was noticed that the voters' list of 1966 and 1989 were of village 130 Jhaler Alga Pt-I whereas the voters' list of 1997 was of village Jhaler Alga and accordingly, a question has arisen as to whether the village 130 Jhaler Alga Pt-I and 126 Jhaler Alga are one and the same village.

6. The respondents in the Election Commission has produced the continuous voters' lists from which it is discernable, as well as submitted, that the two villages are one and the same village. It being so, as there is a continuity in the contents of the voters' lists and if the information contained therein are correct,

the petitioner may have discharged the burden under Section 9 of the Foreigners Act, 1946.

7. In view of the above, the matter stands remanded back to the Tribunal to examine the voters' lists of 1966 and 1989 of village 130 Jhaler Alga Pt-I and the voters' list of 1997 of village 126 Jhaler Alga and pass a reasoned order. The respondents in the Home Department may also make their own enquiry and verification and thereafter, submit a report. Upon doing the needful, the Tribunal to pass a reasoned order.

8. The petitioner to appear before the Tribunal on 11.07.2023.

9. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 05.06.2018 passed in Case No. FT-5/GPR/559/2017 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant