

GAHC010169612018



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

Case No. : WP(C)/5255/2018

AKHER ALI
S/O. MAHAMMAD ALI SHEIKH @ MOHAMMAD ALI, R/O. VILL. KHOPATI
PART-II, P.S. SUKCHAR, DIST. DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY, GOVT. OF INDIA, DEPTT. OF HOME AFFAIRS,
NEW DELHI, INDIA.

2:THE STATE OF ASSAM

REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR
GHY.-06.

3:THE SUPDT. OF POLICE (B)

SOUTH SALMARA
MANKACHAR
DIST. SOUTH SALMARA
ASSAM-783330.

4:THE DY. COMMISSIONER

SOUTH SALMARA
MANKACHAR
DIST. SOUTH SALMARA
ASSAM-783330.

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI.-01.

6:THE NRC COORDINATOR

NATIONAL REGISTER OF CITIZEN (NRC)
ASSAM
BHANGAGARH
GUWAHATI-05

Advocate for the Petitioner : MR N AHMED

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

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

ORDER

12.06.2023

(AM Bujor Barua, J)

Heard Mr. A R Sikdar, learned counsel for the petitioner. Also heard Mr. G Sarma, learned counsel for the Commissioner & Secretary to the Home Department, Dispur, Guwahati, Ms. L Devi learned CGC appearing on behalf of respondents in the Union of India as well as for the respondents in the NRC, Ms. U Das learned counsel appearing for the Deputy Commissioner, Mr. AI Ali, learned counsel for the respondents in the Election Commission of India.

2. The petitioner Akher Ali had been referred to the Foreigners' Tribunal No. No. 2, Kamrup (Metro) resulting in registration of F.T Case No. 197/2015. The Tribunal rendered an opinion dated 11.07.2023 in declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Khopati Part-III, which contains the name of Mohammad Ali Sheikh son of Bahal Uddin at Sl.No.597 and that of Abijan Bewi wife of Bahal Uddin at Sl. No. 598. It is claimed that Mohammad Ali Sheikh is the father of the petitioner and the Abijan Bewi is the grandmother. The voters' list of 1970 of village Khopati Part-III contain the names of Mahammad Ali Sheikh son of Bahal Uddin at Sl. No. 671, Abijan Bewa wife of Bahal Uddin at Sl. No. 672 and that of Surbhan Nessa Bibi wife of Mahammad Ali at Sl. No. 673. Further reliance is placed on the voters' list of 1989 of village Khopati Part-III which contains the name of Mahammad Ali son of Bahal Uddin at Sl. No. 414, Surbhan Bibi wife of Mahammad Ali at Sl. No. 415 and that of Akher Uddin Sheikh son of Mahammad Ali at Sl. No. 416 and all three are residing in the same House No. 200. Further reference is also made to the voters' list of 1977 of village Khopati Part-III which contains the name of Mohammad Ali, Surbhan Bibi and Abhijan Bewa. As the names of Akher Uddin Sheikh appears along with Mohammad Ali in the voters' list of 1985 of village Khopati Part-III and the name of Mohammad Ali appears in the voters' list of 1966 and 1970, a claim is made that the petitioner had discharged that the burden under Section 9 of the Foreigners' Act, 1946 to prove that he is not a foreigner.

4. As the name of the petitioner appears along with Mohammad Ali son of Bahal Uddin and Surbhan Bibi wife of Mohammad Ali in the voters' list of 1985 and the names of Mohammad Ali son of Bahal Uddin appears along with Surbhan Bibi wife of Mohammad Ali in the voters' of 1970 in the same village Khopati Part-III, we are satisfied with the burden discharged by the petitioner that he is not a foreigner. Accordingly, the petitioner is declared to be a deem citizen of India. Consequently, all such legal rights and privileges that may

accrue to the petitioner Akher Ali upon such declaration that he is a citizen of India be made available to him.

6. Writ petition, accordingly, stands allowed.

7. LCR be sent back.

JUDGE

JUDGE

Comparing Assistant