

GAHC010172662016



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

Case No. : WP(C)/4690/2016

GAURA KISHOR SINGHA @ GOURA KISHOR SINGHA
S/O- LT. GOURA MONI SINGHA, VILL.- UTTAR BALUHANDAR, P.O. and P.S.-
LANKA, DIST.- NAGAON NOW HOJAI, ASSAM, PIN- 782446.

VERSUS

THE UNION OF INDIA and 6 ORS
TO BE REP. BY SECY. TO THE GOVT. OF INDIA, HOME DEPTT., NORTH
BLOCK, NEW DELHI, PIN- 110001.

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

3:ADDL. DIRECTOR GENERAL OF POLICE
ASSAM BORDER
BHANGAGARH
GHY- 5.

4:DY. COMMISSIONER
NAGAON
ASSAM
PIN- 782445.

5:DY. COMMISSIONER
HOJAI
SHANKARDEVNAGAR
ASSAM
PIN- 782442.

6: SUPERINTENDENT OF POLICE BORDER
NAGAON
ASSAM
PIN- 782001.

7: SUPERINTENDENT OF POLICE BORDER
HOJAI
ASSAM
PIN- 782435

Advocate for the Petitioner : MS.L WAJEEDA

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

17.08.2023

(AM Bujor Barua, J)

Heard Ms. L Wazeeda, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Nagaon as well as Hojai and Mr. P Sarma, learned Government Advocate for the Deputy Commissioner, Nagaon as well as Hojai.

2. The petitioner, namely, Gaura Kishor Singha @ Goura Kishor Singha was referred to the Foreigners Tribunal Nagaon Court No.7th at Lanka for rendering

an opinion as to whether he is a foreigner within the meaning of Foreigner Act, 1946 resulting in the registration of F.T./L/Case No.257/2015 arising out of SPs Case No.32/2015 wherein an opinion dated 23.06.2016 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Uttar Baluhandar, PS Lanka in the Nagaon district which contains the name of Gaura Moni Singha, son of Krishna Moni at Sl.No.82 and that of Manjuri Devi wife of Krishna Moni at Sl.No.83 and both are shown to be residing at House No.30. The age of Gaura Moni Singha is shown to be 22 years and that of Manjuri Devi to be 45 years. The voters list of 1993 of village Uttar Baluhanda is relied upon which contains the name of Gaura Moni Singha son of Krishna at Sl.No.306, Gaura Kishor son of Gaura at Sl.No.309 and Manjuri wife of Krishna at Sl.No.310. The age of Gaura Moni Singha is shown to be 45 years, whereas the accurate arithmetical calculation would indicate that in 1993 he ought to have been 49 years. But we noticed that the name of Manjuri wife of Krishna is also available in the voters list of 1993 whose name appeared along with Gaura Moni Singha in the voters list of 1966 and her age is shown to be 76 years which is in close proximity of what would be required if she was 45 years in the year 1966. As the name of Gaura Moni Singha, Gaura Kishor and Manjuri appeared together in the voters list of 1993 of the same village Baluhanda, where the name of Gaura Moni Singha and Manjuri Devi appeared in the voters list of 1966 of village Baluhanda, *prima facie*, the petitioner may have

discharged the burden under Section 9 of the Foreigners Act 1946 that he is not a foreigner.

5. In the circumstance, the matter stands remanded back to the Tribunal to enable the Tribunal to examine the complete and continuous voters list of village Baluhanda from the years 1966 up to 1993.

6. The respondents in the Home Department may also make their own verification on the aforesaid aspect, more particularly, as to whether Gaura Kishor son of Gaura of the 1993 voters list of village Uttar Baluhanda and the writ petitioner/proceedee Gaura Kishor Singha are one and the same person and submit a report before the Tribunal, if so advised.

7. Accordingly, the petitioner shall appear before the Tribunal on 18.09.2023.

8. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 23.06.2016 of the Foreigners Tribunal Nagaon Court No.7th at Lanka in F.T./L/Case No.257/2015 arising out of SPs Case No.32/2015 and if it is against the petitioner, consequential action under the law shall follow.

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

10. Writ petition stands disposed of in the above terms.

11. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant