

GAHC010210212018



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

Case No. : WP(C)/6960/2018

MOZNU SHEIKH
S/O. LT. ABUL HUSSEN, VILL. TARANGAPUR, P.S. LAKHIPUR, DIST.
GOALPARA, ASSAM-783131.

VERSUS

THE UNION OF INDIA AND 5 ORS.
TO BE REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA, NEW DELHI-01, INDIA.

2:THE STATE OF ASSAM

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

3:THE SUPDT. OF POLICE (B)

GOALPARA
P.O. AND DIST. GOALPARA
ASSAM-783121.

4:THE DY. COMMISSIONER

GOALPARA
P.O. AND DIST. GOALPARA
ASSAM-783121.

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-01.

6:THE NRC CO-ORDINATOR

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

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

O R D E R

27.06.2023

(A.M. Bujor Barua, J)

Heard Mr. AR Sikdar, 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, Ms. A Verma, 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 Ms. U Das, learned counsel for the Deputy Commissioner, Jorhat.

2. The petitioner Moznu Sheikh had been referred to the Foreigners Tribunal, Jorhat for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of FT Case No.JFT-891/2006, wherein an opinion dated 20.06.2018 was rendered 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 Tarangapur in the Goalpara district, which contains the name of Abu Hossen son of Abdul at serial No. 146 and Mojiran Nessa wife of Abul Hossen at serial No. 147 and both of them are shown to be residing in the same house No. 54. The voters list of 1970 of the same village also contains the same information as regards Abu Hosen and Mojiran Nessa wife of Abul Hossen. The voters list of 1985 of village Tarangapur contains the name of Abul Hosen son of Abdul, Mojiran Nessa wife of Abul, Mojibur Rahman son of Abul and Mobarak Ali son of Abul at serial Nos. 94, 95, 96 and 97 respectively. The voters list of 1997 of village Tarangapur also contains the name of Abul Hossen son of Abdul, Mojiran Nessa wife of Abul, Mojibur Rahman son of Abul along with Mojnu sheikh son of Abul respectively at serial Nos. 306, 307, 308 and 310, where they all are shown to be residing in the same house No. 274.

4. As the name of Mojnu Sheikh appears along with Abul Hossen and Mojiran Nessa, where the names of Abul Hossen and Mojiran Nessa appear in the voters list of 1966 and 1970 of the same village Tarangapur, it is claimed that the burden of proving citizenship under section 9 of the Foreigners Act, 1946 has been discharged.

5. In view of the above, we remand the matter back to the Tribunal to examine the voters list of village Tarangapur of the years 1966, 1970, 1985 and 1997. The petitioner shall produce the complete voters list of the aforementioned years of village Tarangapur before the Tribunal for its examination. The respondents in the Home Department of Government of Assam may make their verification as to whether Mojnu Sheikh of the 1997 voters list of village Tarangapur and the writ petitioner Moznu sheikh are one and the same person and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order thereon.

6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 20.06.2018 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 03.08.2023. 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