

GAHC010211522018



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

Case No. : WP(C)/6605/2018

1. FALU SHEIKH
S/O. HAMED ALI @ HAMEDALI SHEIKH, R/O VILL. BOYZERALGA PT. III,
P.O. NAYERALGA, P.S. BILASIPARA, DIST. DHUBRI, ASSAM, PIN NO. 783348.

VERSUS

1. THE UNION OF INDIA AND 5 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI. 01.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI
01.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE DEPUTY COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM
PIN NO. 783301.

5:THE SUPERINTENDENT OF POLICE (B) DHUBRI
DIST. DHUBRI
ASSAM
PIN NO. 783301.

6:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH

GHY-05

Advocate for the Petitioner : MD H R AHMED

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

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

JUDGMENT

Date : 10-05-2023

(AM Bujor Barua, J)

Heard Mr. H.R. Ahmed, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent No.1 being the Union of India and the respondent No.6 being the authorities under the NRC, Ms. A. Verma, learned Counsel appearing for the Home Department of Government Assam being the respondent No.3 & 5, Mr. T. Pegu, learned counsel for the respondent No.2 being the Election Commission of India, and Ms. U. Das, learned Government Advocate for the respondent No.4 being the Deputy Commissioner, Dhubri.

2. The petitioner, namely, Falu Sheikh on being referred to the Foreigners' Tribunal No.7, Dhubri at Bilasipara for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of FT 7th Dhubri Case No.148/BLP/2017.

3. On 19.06.2018, the Foreigners' Tribunal No.7, Dhubri at Bilasipara rendered an opinion in FT 7th Dhubri Case No.148/BLP/2017, which was against him and being aggrieved by the said opinion, this Writ Petition was instituted by the petitioner.

4. In the Writ Proceeding, the petitioner relied upon the Voters List of 1966 of Village Boyzeralga Part-III in Dhubri District, which contains the name of Jinnat Ali Sheikh, son of Saman Ali, as well as the Voters List of 1971 of Village Boyzeralga Part-III, which contains the name of Hamedali Sheikh, son of Jinnat Ali at Sl. No.475 and it is claimed that Hamedali Sheikh is the father of the petitioner. To substantiate the same, the petitioner further relies on the Voters List of 1997 of Village Boyzeralga Part-III, which contains the name of Hamed Ali, son of Jinnat Ali at Sl. No.1149 and that of Falu Sheikh, son of Hamed Ali at Sl. No.1151 and both are shown to be residing in the same House No.242.

5. Hamedali Sheikh, son of Jinnat Ali of Village Boyzeralga Part-III had also deposed before the Tribunal as DW.2, wherein he stated that Falu Sheikh, the proceedee is his son. It is noticed that DW.2 had not been cross-examined by the authorities in the Home Department of the Government of Assam.

6. Considering above, the matter is remanded back to the Tribunal to direct the Home Department of the Government of Assam, to cross-examine the DW.2, as may be advised. The Tribunal too also look into the aspect that if Jinnat Ali Sheikh, son of Saman Ali of the Voters List of 1966 of Village Boyzeralga Part-III is the grand-father and Hamedali Sheikh, son of Jinnat Ali of the Voters List of 1971 of Village Boyzeralga Part-III is the father and the name of Hamedali Sheikh, son of Jinnat Ali and Falu Sheikh, son of Hamed Ali appears together in the Voters List of 1997 of Village Boyzeralga Part-III. It may be an indication that the petitioner had discharged the burden under Section 9 of the Foreigners Act, 1946 that he is a citizen of India and after doing the needful, a reasoned order may be passed.

7. The petitioner to appear before the Tribunal on 22.06.2023. In the event, a reasoned order is passed in favour of the petitioner, the same would prevail over the order dated 19.06.2018, passed by the Foreigners' Tribunal No.7, Dhubri at Bilasipara in the FT 7th Dhubri Case No.148/BLP/2017 and if it is against him, the implications under the law may follow.

8. Till the reasoned order is passed no coercive action be taken against the petitioner.
9. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant