

GAHC010216562022



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

Case No. : WP(C)/6862/2022

MESER ALI @ MISHER ALI
S/O- MD. DASER ALI, R/O- VILL- BALIABIL, PIPULBARI PART-I, P.O.
KALAPANI, P.S. MANKACHAR, DIST.- SOUTH SALMARA MANKACHAR,
ASSAM, PIN- 783135

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI, PIN- 110001

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR
GHY
ASSAM
PIN- 781006

3:THE SUPERINTENDENT OF POLICE (B)
DIST.- JORHAT
ASSAM

4:THE STATE COORDINATOR OF NRC
OFFICE OF THE STATE COORDINATOR NRC ASSAM 1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GHY
ASSAM

PIN- 781005

5:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
SANSAD MARG AREA
NEW DELHI
PIN- 110001

6:THE DY. COMMISSIONER
JORHAT
ASSA

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

30.05.2023

(AM Bujor Barua, J)

Heard Mr. S Dey, 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. T Pegu, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Jorhat and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Jorhat.

2. The petitioner, namely, Meser Ali @ Misher Ali was referred to the Foreigners Tribunal Jorhat for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of Case No.FT/SVR/310/2010 corresponding to SP's Enquiry No.135/2010 wherein an opinion dated 05.08.2022 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, petitioner relies upon the voters list of 1970 of village Pipulbari Part-I in the South Salmara Mankachar district which contains the name of Majom Ali Sheikh son of Ajahar Ali at Sl.No.167 and that of Nabijan Bibi wife of Majom Ali at Sl.No.168 and both are shown to be residing in the same House No.49. It is claimed that Majom Ali Sheikh is the grandfather of the petitioner and Nabijan Bibi is the grandmother of the petitioner. The petitioner relies upon the voters list of 2008 of village Pipulbari Part-I which contains the name of Daser Ali son of Majom Ali at Sl.No.601 and that of Meseron Bibi wife of Daser Ali at Sl.No.602, where both are shown to be residing at House No.280. It is claimed that Daser Ali is the father of the petitioner. The petitioner further relies upon the voters list of 2019 of village Pipulbari Part-I which contains the name of Meser Ali son of Daser Ali at Sl.No.903 and accordingly claims that the burden under Section 9 of the Foreigners Act 1946 has been discharged to prove that he is a citizen of India.

5. From the above, it appears that the names of the grandfather Majom Ali Sheikh, the father Daser Ali and the petitioner himself appear in the voters list of village Pipulbari Part-I.

6. Accordingly, the matter stands remanded back to the Tribunal to examine the voters list from 1966 to 2019 of village Pipulbari Part-I. The petitioner to produce the complete voters list from 1966 to 2019 of village Pipulbari Part-I for examination of the Tribunal.

7. The respondents in the Home Department may also make their own verification as to whether the writ petitioner/proceedee Meser Ali @ Misher Ali and Meser Ali son of Daser Ali of the 2019 voters list of village Pipulbari Part-I are one and the same person and submit a report before the Tribunal, if so advised.

8. Accordingly, the petitioner shall appear before the Tribunal on 03.07.2023.

9. 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 05.08.2022 of the Foreigners Tribunal Jorhat in Case No.FT/SVR/310/2010 corresponding to SP's Enquiry No.135/2010 and if it is against the petitioner, consequential action under the law shall follow.

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

petitioner.

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

12. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant