

GAHC010235422018



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

Case No. : WP(C)/7461/2018

SHAHADAT ALI
S/O- AYNAL HOQUE, R/O- VILL- MAIRAMARA, MOUZA- GHILZARI, P.S.
HOWLY, DIST- BARPETA, ASSAM, PIN- 781301

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
BARPETA

P.O. AND DIST- BARPETA
ASSAM
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA

P.O. AND DIST- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

6:THE STATE COORDINATOR
OF NATIONAL REGISTRATION OF CITIZEN (NRC)
ASSAM
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : ASSTT.S.G.I. (R1)

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

ORDER

22.06.2023

(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for 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) Barpeta and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Shahadat Ali was referred to the Foreigners' Tribunal (10th) Barpeta for an opinion as to whether he is a foreigner within the meaning of Foreigner Act, 1946 resulting in the registration of F.T.Case No.475/2016 wherein the Tribunal rendered an opinion dated 03.07.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved this writ petition is instituted.

4. The petitioner relies upon the voters list of 1966 of village Moiramara Mouza Ghilajari in the present Barpeta district which contains the name of Sekender Ali, son of Raju Shekh at Sl.No.603 and that of Bakiron Nessa, wife of Sekender Ali at Sl.No.605 and it is claimed that Sekender Ali is the grandfather and Bakiron Nessa is the grandmother of the petitioner. The voters list of 1970 also of village Moiramara relied upon by the petitioner also contains the same information. The petitioner further relies upon the voters list of 1997 of village Moiramari which contains the name of Aynal Hoque son of Sakender at Sl.No.1020 and that of Hanufa Khatun wife of Aynal at Sl.No.1021, where both of them are shown to be residing in the same House No.275. It is claimed that Aynal Hoque is the father of the petitioner and Hanufa Khatun to be the mother of the petitioner. Reliance is also placed on a copy of the jamabandi in respect of a plot of land in village Moiramara which, amongst others, contains the name of Sekander Ali, son of Raju at Sl.No.13, that of Aynal Hoque, son of Sekandar Ali at Sl.No.15 and that of Sahadat Ali, son of Aynal Haque at Sl.No.18. As the name of the petitioner appears along with Aynal Haque, the father and Sekendar Ali the grandfather, it is claimed that the burden under Section 9 of the Foreigners Act 1946 to prove that he is a citizen of India has been discharged by the petitioner.

5. The jamabandi also contains reference of the order of the Circle Officer dated 20.02.2002 in the mutation case, where the name of Aynal Hoque amongst others was substituted in place of Sekander Ali in respect of a plot of

land under dag No.618 and 620 and also the mutation order dated 06.09.2002 by which the name of Sahadat Ali along with others have been mutated in place of Aynal Hoque in respect of dag No.618.

6. Accordingly, by virtue of the information contained in the jamabandi, the petitioner claims that the lineage of the petitioner with Sekander Ali of the 1966 voters list of village Moiramara has been established and therefore, he had discharged the burden under Section 9 of the Foreigners Act 1946.

7. In view of the above, the matter stands remanded back to the Tribunal to examine the voters list of 1966, 1970 and 1997 of village Moiramara.

8. The petitioner to produce the complete voters list of 1966, 1970, 1977, 1985 and 1997 of village Moiramara for examination of the Tribunal. The petitioner shall also produce the complete orders of mutation dated 20.02.2002 and 06.09.2002 for examination of the Tribunal.

9. The respondents in the Home Department may also make their own verification on the aforesaid aspect and also as to whether Sahadat Ali, son of Aynal Haque referred in the mutation orders and the writ petitioner/proceedee Sahadat Ali are one and the same person and submit a report before the Tribunal, if so advised.

10. Accordingly, the petitioner shall appear before the Tribunal on 26.07.2023.

11. 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 03.07.2018 of the Foreigners' Tribunal (10th) Barpeta in F.T.Case No.475/2016 and if it is against the petitioner, consequential action under the law shall follow.

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

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

14. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant