

GAHC010238462018



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

Case No. : WP(C)/7482/2018

SAHAR ALI @ SAHOR ALI
S/O LATE MAHABBAT ALI @ MOHBAT ALI SHEIKH @ MOHABBAT ALI
VILL- PASCHIM SATGHORIA PARA, BINNACHARA
P.O. BALADOBA P.S. GOLAKGANJ
DIST. DHUBRI, ASSAM,
PIN - 783334

VERSUS

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

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

DEPARTMENT OF HOME
DISPUR
GUWAHATI -06.

3:THE ELECTION COMMISSIONER OF INDIA

THROUGH ITS SECRETARY
NIRBACHAN BHAWAN

NEW DELHI-1.

4:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)

ASSAM

BHANGAGARH
GUWAHATI -5.

5:THE DEPUTY COMMISSIONER OF KAMRUP (M)

DIST. KAMRUP (M)
ASSAM.

6:THE SUPERINTENDENT OF POLICE (B)

KAMRUP (M)
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. R ALI

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

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

ORDER

Date : 01.03.2023
(A.M. Bujor Barua, J)

Heard Mr. R. Ali, learned counsel for the petitioner and Mr. B. Sarma, learned counsel for the respondent No. 1, being the Union of India. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; Mr. A. Ali, learned counsel for the respondent No. 3, being the Election Commission of India; Ms. L. Devi, learned counsel for the respondent No. 4, being the State Co-ordinator of NRC and Ms. U. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Kamrup(M).

2. The petitioner Sahar Ali @ Sahor Ali was referred to the Foreigners'

Tribunal No. 2, Kamrup(M) for an opinion as to whether he is a person who had entered the State of Assam from the specified territory subsequent to 25.03.1971 and accordingly Case No. F.T. Case No. 102/2017 was registered. The petitioner refers to the voters' list of 1970 of village 222 Binnachara Pt. III in the Dhubri district which contains the name of Mahabbat Ali son of Penatu at Sl. No. 33. The petitioner also refers to a transfer or leaving certificate of Binnachara M.E. Madrassa which contains the information that Sahor Ali is the son of Mohabbat Ali of village Binnachara.

3. The said information could have been appropriately appreciated had the petitioner also brought in the evidence of the Headmaster of the concerned madrassa and it could have established that the petitioner is a citizen of India. However at the same time, an issue had also arisen as to whether the reference was appropriately made by the Superintendent of Police(B) to the Foreigners' Tribunal No. 2, Kamrup(M) for rendering an opinion. In this respect, an affidavit has been filed by the Commissioner of Police(B), Guwahati dated 18.02.2019 wherein it has been stated that the matter was re-examined and it was found that the reference made on 11.01.2008 was incorrect as per the records maintained in the office and that the reference itself ought not to have been made.

4. In view of such stand of the Commissioner of Police(B), Guwahati, the reference itself is declared to be null and void and consequently, the proceeding against the petitioner is dropped and all such orders/opinions that may have been rendered by any authority including the Tribunal shall be construed to be null and void. The petitioner now would be entitled to all the rights and privileges under the Constitution as a citizen of India.

Writ petition stands allowed as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant