

GAHC010242692018



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

Case No. : WP(C)/7590/2018

SAHAJAMAL SEIKH
S/O LATE MOYNAL HAQUE
R/O VILL- NO. 285 KHOPATI, P.S. SUKCHAR, DIST. SOUTH SLMARA
MANKACHAR, ASSAM, PN - 783135.

VERSUS

THE UNION OF INDIA AND 9 ORS.
REP. BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN,
NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI - 781006.

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR ACHYUT PLAZA
G.S. ROAD BHANGAGARH
GUWAHATI ASSAM
PIN - 781005.

5:THE FOREIGNERS TRIBUNAL KAMRUP (METRO) NO. 2
AT GUWAHATI
HEDAYATPUR
GUWAHATI -03
DIST. KAMRUP (METRO)
ASSAM.

6:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
P.O. HATSINGIMARI
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN - 783135

7:THE DEPUTY COMMISSIONER OF POLICE (B)
CITY GUWAHATI
KAMRUP (MERO)
ASSAM
PIN - 781001.

8:THE SUPERINTENDENT OF POLICE (BORDER)
DHUBRI
P.O. AND P.S. DHUBRI
DIST. DHUBRI
ASSAM
PIN - 783301.

9:THE OFFICER-IN-CHARGE OF SUKCHAR POLICE STATION
POST OFFICE- SUKCHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN - 783135.

10:THE OFFICER-IN-CHARGE OF BHANGAGARH P.S.
P.O. BHANGAGARH
DIST. KAMRUP (MERO)
ASSAM
PIN - 78100

Advocate for the Petitioner : MR. M AHMED

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

BEFORE
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

02.05.2023

(AM Bujor Barua, J)

Heard Ms. D. Ghosh, 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. A.I. 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, the Deputy Commissioner of Police (B), City Guwahati, Superintendent of Police (B), Dhubri, Officer in charge of Sukchar Police Station and Bhangagarh Police Station and Mr. N.K. Das, learned Government Advocate for the Deputy Commissioner, South Salmara Mankachar.

2. The petitioner, Sahajamal Seikh had been referred to the Foreigners Tribunal, Kamrup (M) 2nd, Guwahati 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 F.T. Case No.71/2017. The learned Tribunal rendered an opinion dated 09.10.2018 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding, the petitioner relies on the voters list of 1966 of village Borkolia Surjyamani in the present South Salmara Mankachar District which contains the name of Moynal Haque, son of Kasimuddin and claims that

Moynal Haque is his father. Thereupon the petitioner relies on the voters list of 1970 of village Khopati Part-III also in the present South Salmara Mankachar District which contains the name of Moynal Haque, son of Kasmath Ali at Serial No.212. It is stated that Moynal Haque of village Borkolia Suryamoni referred in the voters list of 1966 had subsequently shifted to village Khopati Part III. Be that as it may, voters list of 1970 of village Khopati Part III shows that Moynal Haque was in existence prior to 1970 at village Khopati Part III. The petitioner thereupon relies on the voters list of 2015 also of village Khopati Part III which contains the name of Moynal Haque, son of Kasmath Ali at Serial No.37 and that of Sofiya Khatun, wife of Moynal Haque at Serial No.38 and Shahajamal Seikh, son of Moynal Haque at Serial No.39 and all of them have been shown residing in House No.350.

5. Accordingly, the petitioner claims that the burden under Section 9 of the Foreigners Act, 1946 had been discharged. As the voters list of 1970 of village Khopati Part III shows that Moynal Haque, son of Kasmath Ali is a citizen of India and the name of Shahjamal Seikh, son of Moynal Haque appears along with Moynal Haque, son of Kasmath Ali in the same voters list of 2015 also of village Khopati Part-III, *prima facie*, it appears that the petitioner may have discharged his burden.

6. For proper adjudication, the matter is remanded to the Tribunal to examine the voters list of 1970 of village Khopati Part III and the voters lists of 2015 of village Khopati Part III and thereupon, pass a reasoned order as to whether the petitioner could discharge his burden under Section 9 of the Foreigners Act, 1946.

7. We have noticed that the Tribunal in its order dated 09.10.2018 had provided that through the exhibits it is not possible to ascertain that person

named as Moynal Haque, son of Kasmal in the voters lists of 1966, 1970, 1977, 1985, 1989, 1994 and 1997 and the person Moynal Haque, father of Sahajamal Sheikh in the voters list of 2017 are one and the same person.

If the Tribunal could not determine/ascertain whether the two persons are same, it is the duty of the Tribunal to call for further materials for ascertaining and pass a reasoned order rather than leaving the question open and declaring the petitioner to be a foreigner without deciding the issue.

8. For proper adjudication, petitioner to produce/rely on the complete voters lists between the period 1970 and 2015 of village Khopati Part III for examination by the Tribunal.

9. The respondents in the Home Department may also make their own verification and more particularly, as to whether Shahjamal Seikh, son of Moynal Haque at Serial No.39 referred in the voters list of 2015 of village Khopati Part III and the petitioner/proceedee, Sahajamal Seikh are one and the same person.

10. Upon doing the needful, a reasoned order be passed by the Tribunal.

11. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 09.10.2018 rendered in F.T. Case No.71/2017 and if it goes against the petitioner, consequence as per law shall follow.

12. The petitioner shall appear before the Foreigners Tribunal, Kamrup (M), 2nd, Guwahati on 07.06.2023.

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

14. The writ petition is disposed of as indicated above.

15. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant