

GAHC010250392019



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

Case No. : WP(C)/7951/2019

MOHIBUR RAHMAN @ MAHBUR RAHMAN
S/O. LT. JANAB ALI, VILL. RANGADIA BALIJAN, P.S. MIKIRBHETA, DIST.
MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI, 110001.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA

NEW DELHI-110001.

4:THE STATE COORDINATOR

NRC ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-781005.

5:THE STANDING COUNSEL

SPL. FT AND BOARDER.

6:THE DY. COMMISSIONER

MORIGAON
ASSAM-782105.

7:THE SUPDT. OF POLICE (B)

MORIGAON
ASSAM-782105.

8:THE O/C

MIKIRBHETA POLICE STATION
MORIGAON
782108

Advocate for the Petitioner : MR. P RAHMAN

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

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

ORDER

25.05.2023

(AM Bujor Barua, J)

Heard Mr. P Rahman, 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. AI Ali, 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, the Superintendent of Police (B) Morigaon as well as the Officer-in-Charge, Mikirbheta Police Station, Morigaon and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Morigaon.

2. The petitioner, namely, Md. Mohibur Rahman @ Mahbur Rahman was referred to the Foreigners Tribunal No.3rd Morigaon 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.F.T.47/2015 arising out of Reference F.T. Case No.402/2007 wherein an opinion dated 28.08.2019 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 1965 of village Rangadaria Gaon, PS Mikirbtheta in the Nagaon district which contains the name of Janab Ali son of Ismot at Sl.No.494 and that of Raijan wife of Janab at Sl.No.495. It is claimed that Janab Ali son of Ismot of the 1965 voters list is the father of the petitioner and Raijan wife of Janab is the mother of the petitioner. Reliance is also placed on the voters list of 1993 of village Rangadaria P.S. Mikirbtheta which contains the name of Raijan Bibi wife of Janab at Sl. No.318 and that of Mohibur son of Janab at Sl.No.320 and both are shown to be residing in the same House No.189. It is claimed that as the name of Mohibur appears along with Raijan Bibi in the 1993 voters list and the name of Janab Ali and Raijan appears together in the voters list of 1965 of village Rangadaria Gaon, the petitioner has discharged the burden under Section 9 of the Foreigners Act 1946 to prove that he is a citizen of India.

5. Accordingly, the matter stands remanded back to the Tribunal to insist upon production of the complete and continuous voters list from 1966 to 1993 of village Rangadaria P.S. Mikirbheta which the petitioner may provide for examination of the Tribunal. In the event, it is not possible on the part of the petitioner to provide the same, the authorities in the Election Department may be required to do the needful. Upon the same being produced, the Tribunal to examine the implication thereof and pass a reasoned order. If there is continuity in the entries in the voters list in respect of Janab Ali son of Ismot and that of Raijan wife of Janab along with Mohibur son of Janab, the Tribunal may passed its order.

6. The respondents in the Home Department may also make their own verification as to whether the writ petitioner/proceedee Md. Mohibur Rahman @ Mahbur Rahman and Mohibur son of Janab of the 1993 voters list of village Rangadaria are one and the same person and submit a report before the Tribunal, if so advised.

7. Accordingly, the petitioner shall appear before the Tribunal on 27.06.2023.

8. 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 28.08.2019 of the Foreigners Tribunal No.3rd Morigaon in Case No.F.T.47/2015 arising out of Reference F.T. Case No.402/2007 and if it is against the petitioner, consequential action under the law shall follow.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.
10. Writ petition stands disposed of in the above terms.
11. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant