

GAHC010260012017



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

Case No. : WP(C)/1864/2017

RUSTAM ALI
S/O LT. SORHAB ALI @ SORHAB SHEIKH R/O VILL- PUTHIMARI P.S.
SORBHOG, DIST. BARPETA, ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE 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
HOME DEPARTMENT DISPUR
GUWAHATI-6.

3:THE SUPERINTENDENT OF POLICE B

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

4:THE DEPUTY COMMISSIONER

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

Advocate for the Petitioner : MR.M H TALUKDAR

Advocate for the Respondent : GA, ASSAM R2,3 and 4

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

26.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. K.K. Para, learned CGC, appearing for respondent No.1; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 3 and Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.4.

2. The petitioner Rustam Ali had been referred to the Foreigners' Tribunal 11th, Sorbhog, Barpeta, for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of F.T. Case No.175/2016. The Tribunal rendered an opinion dated 30.11.2016 declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner relies upon the voters list of 1965 of village Jamadharbori, P.S.-Sorbhog, in the present Barpeta district, which contains the name of Sorhab Sheikh S/O Azizal at Sl. No.177. The petitioner thereupon relies on the voters list of 1993 of village Jamadharbori which contains the name of Rustam Ali S/o Sorab at Sl. No.213. The petitioner claims that as Rustam Ali is the son of Sorab and the name of Sorab appears in the voters list of 1965 of the same village Jamadharbori, therefore, he has discharged the burden under Section 9 of the Foreigners Act, 1946. But however, it is noticed that the voters list of 1965 contains only three names and in the voters list of 1993 only name of Rustam Ali appears.

4. For the purpose, the matter is remanded back to the Foreigners' Tribunal 11th, Sorbhog, Barpeta to examine the voters list of 1965 and 1993 of village Jamadharbori. The petitioner to produce the complete and contiguous voters list of village Jamadharbori from 1965 to 1993 for examination of the Tribunal. The petitioner may also render any further evidence, if so advised. The respondents in the Home Department may make their own verification as to whether Rustam Ali of the voters list of 1993 and the writ petitioner Rustam Ali are one and the same person and thereafter submit a report before the Tribunal. Upon doing the needful, the Tribunal shall pass a reasoned order. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.11.2016 and if it is against the petitioner, consequential action shall follow.
5. The petitioner shall accordingly appear before the Tribunal on 24.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.
6. Send back the LCR immediately.
7. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant