

GAHC010263302018



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

Case No. : WP(C)/8205/2018

ABDUL OHAB SHEIKH @ OHAB SHEIKH
S/O- LT CHECHU UDDIN SEKH @ CHECHU SEKH @ JESU, R/O- VILL-
KALBARI, P.S. SORBHOG, DIST- BARPETA, ASSAM, PIN-

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO MINISTRY OF HOME AFFAIRS, 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 HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.S. AND DIST- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECY.
NIRBACHAN BHAWAN
NEW DELHI-1

6:THE STATE CO-ORDINATE OF NATIONAL REGISTRATION OF CITIZEN
(NRC)
ASSAM
BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A R SIKDAR

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

29.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy.S.G.I. for the respondent No.1 and also appearing as standing counsel, NRC, for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. T. Pegu, learned standing counsel, ECI, for respondent No.5 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Abdul Ohab Sheikh had been referred to the Foreigners' Tribunal 11th, 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 Case No.(Bpt/11th)F.T. 672/2016. The Tribunal rendered an opinion dated 17.09.2018 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 on the voters list of 1965 of village Kalbari, which contains the name of Chechu Uddin Sk S/o Alef at Sl.No.93 and thereupon the voters list of 1985 of village Kalbari, which contain the names of Chechu Sk S/o Alefuddin at Sl.No.188 and that of Abdul Ohab Sk S/o Chechu Sk at Sl.No.190 and both are residing in the same house No.85. It is claimed that Abdul Ohab Sk of the 1985 voters list is the petitioner/proceedee himself and as his name appears along with Chechu Sk in the voters list of 1985 of village Kalbari and the name of Chechu Uddin Sk appears in the voters list of 1965 of village Kalbari, the burden under Section 9 of the Foreigners Act, 1946 has been discharged.

4. In view of above, the matter is remanded back to the Tribunal to examine the voters lists of 1965 and 1985 of village Kalbari and arrive at the conclusion that whether Abdul Ohab Sk of the 1985 voters list of village Kalbari and Abdul Ohab Sheikh, the petitioner herein, are one and the same person and thereupon pass a reasoned order. The respondents in the Home Department may make their own verification as to whether Abdul Ohab Sk of the 1985 voters list of village Kalbari and Abdul Ohab Sheikh, the petitioner herein, are one and the same person and submit a report before the Tribunal. In the event, the reasoned order is passed in favour of the petitioner, the same shall prevail over the earlier opinion dated 17.09.2018 and if it is against the petitioner, consequential action shall follow.

5. The petitioner shall accordingly appear before the Tribunal on 01.07.2023. 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