

GAHC010264202017



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

Case No. : WP(C)/2448/2017

ABDUS SAMAD @ ABDUL SAMAD @ SAMAD ALI
S/O LT. MAFIZUDDIN R/O VILL- TOPGAON PART-II P.O. TOPGAON, P.S.
MERERCHAR DIST. BONGAIGAON, 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

BONGAIGAON
P.O. and DIST. BONGAIGAON
ASSAM

4:THE DEPUTY COMMISSIONER

BONGAIGAON
P.O. and DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR.A R SIKDAR

Advocate for the Respondent : MR.D K SAIKIA

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

ORDER

17.05.2023

[A.M.Bujor Barua, J.]

Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent no. 1; Mr. G. Sarma, learned counsel for the respondent nos. 2 and 3; and Ms. U. Das, learned counsel for the respondent no. 4.

2. The petitioner Abdus Samad @ Abdul Samad @ Samad Ali had been referred to the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri 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 resulting in registration of BNGN/FT Case No. 1601/08, wherein an opinion dated 09.09.2019 had been rendered declaring the petitioner to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the Voters' List of 1966 of village Topgaon Part-II, under Abhayapuri (SC) LAC 42, which contains the name of Mafizuddin, son of Talep Hussain at serial no. 40 and that of Alima Bewa wife of Talep Hussain at serial no. 41. It is stated that Mafizuddin is the father and the Alima Bewa is the grandmother of the petitioner. The petitioner also relies upon the Voters' List of 1985 of village Togaon Part-II which contains the name of Samad Ali son of Mafizuddin at serial no. 266. Accordingly, it is claimed that burden under section 9 of the Foreigners' Act 1946 had been discharged, inasmuch as, if Samad Ali is the son of Mafizuddin in the Voters' List

of 1985 of village Topgaon Part-II and Mafizuddin is the son of Talep Hussain in the Voters' List of 1966 of village Topgaon Part-II, it has been established that the petitioner is citizen of India.

4. In the circumstance, the matter is remanded back to the Foreigners' Tribunal, Bongaigaon No. 2, Abhayapuri to examine the Voters' List of 1966 and 1985 of village Topgaon Part-II and the respondent in the Home Department make their own verification and to submit the report before the Tribunal.

5. Upon undertaking the exercise, the Tribunal may pass a reasoned order and if the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 09.09.2019 passed in BNGN/FT Case No. 1601/08, and if against, consequence under the law is applicable to the petitioner.

6. The petitioner to appear before the Tribunal on 01.07.2023.

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

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant