

GAHC010264452022



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

Case No. : WP(C)/8374/2022

JOHIRUL ALI
S/O- LATE KHATIULLAH SHEIKH,
R/O- JAIL ROAD, WARD NO. 8,
P.O. AND P.S.- NORTH LAKHIMPUR,
DISTRICT- LAKHIMPUR, ASSAM,
PIN- 787001.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI- 110001.

2:THE STATE OF ASSAM
DEPARTMENT OF HOME

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

DISPUR
GUWAHATI- 781006.

3:THE ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD

NEW DELHI- 110001.

4:THE DEPUTY COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM

PIN- 787001.

5:THE SUPERINTENDENT OF POLICE (BOARDER)
LAKHIMPUR
NORTH LAKHIMPUR

ASSAM
PIN- 787001

Advocate for the Petitioner : MR. R P SARMAH

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER
(ORAL)

02-01 -2023

[N. Kotiswar Singh, JJ]

Heard Mr. R.P. Sarmah, learned Senior Counsel assisted by Ms. A. Deka, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC for the respondent no.1; Ms. A. Verma, learned Special Counsel, F.T. for of the respondent no.5; Mr. A.I. Ali, learned Standing Counsel, ECI, for the respondent no.3 and Ms. K. Phookan, learned State Counsel, Assam, for the respondent nos.2 & 4.

2. Considering the nature of the case, as revealed, we are of the view that the present writ petition can be disposed of at this stage without issuing any formal notice to the respondents.

3 By filing this petition the petitioner has challenged the impugned *ex parte* opinion dated 28.04.2022 passed by the learned Foreigners Tribunal (1st), Lakhimpur, North Lakhimpur, in Lakhimpur F.T.(1) Case No.3171/2011 by which the petitioner has been declared a foreigner of post 25.03.1971 and has prayed for remanding the matter before the concerned learned Tribunal for a fresh consideration.

4. Learned Senior Counsel for the petitioner submits that the learned Tribunal passed the impugned *ex parte* opinion dated 28.04.2022 because of the failure on the part of the petitioner to appear before the Tribunal to adduce evidence. It has been submitted that on 02.03.2020 the petitioner/proceedee appeared before the Tribunal along with his engaged counsel and filed the written statement. It has been further submitted that however, the petitioner or his engaged counsel could not appear before the Tribunal on subsequent dates due to the Corona Virus (Covid-19) pandemic and the lockdown imposed. It has been submitted by the learned Senior Counsel for the petitioner that the petitioner otherwise has sufficient documents to prove that he is an Indian and not a foreigner. In this regard he has drawn attention of this Court to the voters list of 1970 where the names of one Khatiullah Seikh, son of one Amruddin and one Ale Khatun, wife of Khatiullah Seikh, whom the petitioner claims to be his parents, were entered under Mouza-Kharija Bijni, Vill-Bogidara, P.S.-Sarbhog, Sub-Division-Barpeta, LAC-47 No. Sarbhog. Accordingly, it has been submitted that this is a very important document on the basis of which the petitioner can claim that he is an Indian and not a foreigner as his parents were in Assam (India) before 1971.

5. Mr. R. P. Sarmah, learned Senior Counsel for the petitioner also submits that it is not the case that the petitioner had failed to appear or was negligent or not willing to take part in the proceeding of the case, inasmuch as, he had filed his written statement, but unfortunately, because of the lockdown imposed due to Covid-19 pandemic, he could not appear before the Tribunal on subsequent dates and adduce evidence.

6. On the other hand, Ms. A. Verma, learned Special Standing Counsel, F.T., submits that even after the lockdown was lifted, the petitioner did not bother to appear before the Tribunal. She submits that the petitioner should be more careful, inasmuch as, if the petitioner does not appear before the Tribunal to pursue his case, he should blame himself and no one else.

7. We have heard learned counsel for the parties and perused the records.

8. We have also gone through the opinion dated 28.04.2022 passed by the learned Foreigners Tribunal (1st), Lakhimpur, North Lakhimpur, in Lakhimpur. In Para-4 of the opinion dated 28.04.2022, it has been clearly mentioned that the engaged counsel did not take any steps for non-proceeding of Court cases due to the spread of "Corona Virus (Covid-19)" infection under the pandemic situation as per order of the Government of India.

9. Accordingly, we are of view that since the petitioner has claimed that he has certain document on the basis of which he can prove that he is an Indian and not a

foreigner, he may be given an opportunity to prove his citizenship by giving him a chance to adduce all the necessary documents.

10. Under such circumstances and for the reason discussed above, we allow this petition by setting aside the impugned *ex parte* opinion dated 28.04.2022 passed by the learned Foreigners Tribunal (1st), Lakhimpur, North Lakhimpur, in Lakhimpur F.T.(1) Case No.3171/2011.

11. The petitioner shall, accordingly, appear before the concerned Foreigner Tribunal on 21.01.2023 and shall adduce his evidence to prove that he is an Indian and not a foreigner. The Tribunal after hearing the parties and considering the evidence so adduced by the petitioner will proceed with the reference in accordance with law. It is made clear that if the petitioner fails to appear before the Tribunal on that date (21.01.2023), the order passed by this Court today shall stand recalled without any further order of this Court and the *ex parte* opinion dated 28.04.2022 will stand revived and the law will take its own course.

12. It is made clear that till the subsistence of the proceeding before the Tribunal, the petitioner shall be allowed to remain on bail as granted by the abovementioned Tribunal on 20.02.2020.

However, the Superintendent of Police (Border), Lakhimpur, shall take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner. The petitioner also shall not leave the jurisdiction of Lakhimpur, North Lakhimpur

district without furnishing the details of the place of destination and his place of stay to the Superintendent of Police (Border), Lakhimpur including relevant contact/mobile number.

It is made clear that failure on the part of the petitioner to provide relevant mobile/contact number will warrant recalling of this bail order.

13. With the above observations and directions, the writ petition stands disposed of.

14. Copy of this order be furnished to the Superintendent of Police (B), Lakhimpur for doing the needful.

JUDGE

JUDGE

Comparing Assistant