

GAHC010264542017



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

**Case No. : WP(C)/1545/2017**

APASH ALI SK  
S/O LT. ABDUL AZIZ SK VILL- WEST TOKRER CHARA P.S. GOLAKGANJ  
DIST. DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, NEW DELHI- 11000.

2:THE STATE OF ASSAM  
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
HOME DEPARTEMNT DISUR  
GUWAHATI -6.

3:THE DEPUTY COMMISSISONER

DHUBRI  
DIST. DHUBRI  
ASSAM

4:THE SUPERINTENDENT OF POLICE B

DHUBRI  
ASSAM

5:THE OFFICER-IN-CHARGE

GOLAKANJ POLICE STATION  
DIST. DHUBRI  
ASSA

**Advocate for the Petitioner : MRS.R BARKATAKY**

**Advocate for the Respondent :**

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

**ORDER**

**Date : 25-04-2023**

***(AM Bujor Barua, J)***

Heard Mr. PA Ahmed, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondent no. 1 being the Union of India, Mr. A Kalita, learned counsel for the respondents no. 2, 4 and 5 being the authorities under the Home Department of Government of Assam and Ms. K Phukan, learned counsel for the respondent no. 3 being the Deputy Commissioner, Dhubri.

2. The petitioner Apash Ali Sk had been referred to the Foreigners' Tribunal No. 8, Dhubri 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 FT Case No. 8/343/GKJ/2015, which was earlier registered as FT Case No.94/2015. The Tribunal rendered an opinion dated 07.11.2016 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ petition, the petitioner refers to the voters' list of 1966 of village Airanjangla Part III under PS Dhubri in the Dhubri district which contains the name of Abdul Aziz Sk., S/O Keram Sk. at Sl. No. 311 and that of Refaton Nessa Bibi, W/O Abdul Aziz at Sl. No. 312.

5. The petitioner claims that Abdul Aziz Sk of the 1966 voters' list is his father.

6. The petitioner thereupon relies on the voters' list of 1989 of village West Tukrechara under Police Station Golakganj in the Goalpara district which contains the name of Abdul Aziz Sk, S/O Keram at Sl. No. 1042 and that of Apash Uddin Sk, S/O Abdul Aziz at Sl. No. 1159.

7. Accordingly, the petitioner claims that he had discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is an Indian citizen inasmuch as the name of Abdul Aziz Sk also appears in the voters' list of 1966 of village Airanjangla Part III. But it is noticed that the 1966 voters' list pertains to village Airanjangla Part III of Dhubri district whereas the voters' list of 1989 is in respect of village West Tukrechara in the Goalpara district. The petitioner explains that in an around the year 1980 the petitioner along with his father Abdul Aziz Sk had shifted from village Airanjangla Part III to village West Tukrechara.

8. In order to examine the veracity of such claim of the petitioner that there was a shifting we required the respondent Election Commission of India to produce the downward voters' list of 1980 in respect of village Airanjangla Part III and that of upward voters' list of village Tukrechara prior to 1989.

9. Accordingly, the complete voters' lists as indicated above have been produced before the Court.

10. A reading of the voters' lists indicates that after the year 1980 the name of Abdul Aziz Sk stood deleted from the voters' list of village Airanjangla Part III whereas it was included in the voters list of 1989 of village Tukrechara. On the other hand the voters' list of village West Tukrechara shows that the name of

Abdul Aziz Sk did not appear prior to 1989. The fact that the name of Abdul Aziz Sk was discontinued in the voters' list of village Airanjangla Part III after 1980 and was included in the voters' list of village West Tukrechara in 1989, the same may indicate that Abdul Aziz Sk had shifted his residence from village Airanjangla Part III to West Tukrechara.

11. In view of the above, the matter stands remanded back to the Tribunal to examine the aspect whether Abdul Aziz Sk had shifted from village Airanjangla Part III to West Tukrechara and accordingly, whether the petitioner would establish his citizenship. The respondents in the Home Department may verify the claim of shifting of the petitioner and may produce any relevant material, if so advised. Accordingly, a reasoned order may be passed.

12. The petitioner to appear before the Tribunal on 02.06.2023.

13. If the reasoned order is in favour of the petitioner, the same prevail over the opinion/order dated 07.11.2016 passed in FT Case No. 8/343/GKJ/2015, which was earlier registered as FT Case No.94/2015 and if against, consequence under the law is applicable to the petitioner.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

**JUDGE**

**JUDGE**

**Comparing Assistant**