

GAHC010304842019



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

Case No. : WP(C)/9038/2019

SOHIDUR ALI SK. @ SAHIDUR RAHMAN SK.
S/O- LT. MOHAMMAD ALI SK
VILL- UJANPETLA PT.I
P.O. UJANPETLA
P.S. TAMARHAT

DIST. DHUBRI
ASSAM
PIN- 783332

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. OF THE MINISTRY OF HOME AFFAIRS
NEW DELHI-01

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-01

3:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR

GHY-6

4:THE DY. COMMISSIONER
DHUBRI
ASSAM

PIN- 783301

5:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
ASSAM

PIN- 783301

6:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-05

Advocate for : MR H R A CHOUDHURY
Advocate for : ASSTT.S.G.I. (R1) appearing for THE UNION OF INDIA AND 5 ORS.

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN**

O R D E R

17.05.2023

(A.M. Bujor Barua, J)

Heard Mr. AFNU Mollah, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the respondents in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. A.I Ali, learned counsel for the Election Commission of India and Mr. PK Medhi, learned counsel for the Deputy Commissioner, Dhubri.

2. The petitioner Sohidur Ali Sk @ Sahidur Rahman Sk had been referred to the Foreigners Tribunal No.10, 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 Case No. FT-10/TMH/122/2015, wherein the Tribunal rendered an ex-parte opinion dated 02.02.2016 declaring the petitioner to be a foreigner.

3. The reasoning of the Tribunal for rendering the ex-party opinion is that notice as issued to the petitioner which was returned served in the manner as provided under Clause-3 of the Foreigners Tribunal Order, 1964. But in spite of having received the notice, the petitioner remained absent on several dates

without taking any steps and accordingly the matter was fixed for ex-parte consideration and thereupon the ex-parte opinion was rendered.

4. Considering the conduct of the petitioner as reflected in the order of the Tribunal, no infirmity can be noticed in the ex-parte opinion dated 02.02.2016.

5. In the writ proceeding, the petitioner refers to the voters list of 1966 of village 35 Ujanpetla Part-I, which contains the name of Lalu Sheikh, son of Khela sheikh at serial No. 600 as well as the voters list of 1979 of village 10 Ujanpetla Part-I, which contains the name of Mohammad Ali son of Lalu Sheikh at serial No. 1066. It is claimed that Mohammad Ali is the father of the petitioner. The petitioner also relies upon certain school certificates issued by the Headmaster of Chapar Balajan High School, which contains the information that Sohidor Ali Sk is the son of Late Mohammad Ali Sheikh of village Ujanpetla. But as the petitioner did not appear before the Tribunal, no opportunity could be availed by him to examine the Headmaster of the school concerned.

6. Considering the materials available on record which the petitioner relies upon to discharge the burden under section 9 of the Foreigners Act, 1946, for the interest of justice, we remand the matter back to the Tribunal to give an opportunity to the petitioner to appear before the Tribunal and discharge the burden as indicated above.

7. However, for the conduct of the petitioner and also taking note that he had taken the advantage of the situation since the year 2015 by not appearing before the Tribunal, a cost of Rs. 10,000/- is imposed on the petitioner to be deposited before the District Legal Services Authority, Dhubri and upon showing the proof of payment to appear before the Tribunal. It is stated that the petitioner had filed a petition for vacating the ex-parte opinion, which was

rejected by the Tribunal.

8. In view of the above, the ex-parte order dated 02.02.2016 is set aside.

9. Accordingly, the petitioner shall appear before the Foreigners Tribunal No.10, Dhubri on 01.07.2023. Upon appearance of the petitioner, the Tribunal may pass any order on merit.

10. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant