

GAHC010308032019



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

Case No. : WP(C)/13/2020

HABIBULLA SHEIKH
S/O- SARITULLA SHEIKH, R/O- VILL. SASTARGHAT PART-II, P.S. DHUBRI,
DIST.- DHUBRI, ASSAM, PIN- 783324.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001.

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GHY.
ASSAM- 781005.

5:THE DY. COMMISSIONER
DHUBRI
P.O. AND P.S. DHUBRI
DIST.- NAGAON
ASSAM
PIN- 783301.

6:THE FOREIGNERS TRIBUNAL NO.1
DHUBRI
ASSAM
DIST- DHUBRI
ASSAM
PIN- 783301.

7:THE SUPDT. OF POLICE (B)
DHUBRI
P.O. AND P.S. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301.

8:THE OFFICER-IN-CHARGE OF DHUBRI POLICE STATION
P.O. AND DIST.- DHUBRI
ASSAM
PIN- 783301

Advocate for the Petitioner : MR. M AHMED

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

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

Date : 19-06-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L

Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sharma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Dhubri as well as the Officer-in-Charge Dhubri Police Station and Ms. U Sharma, learned Government Advocate for the Deputy Commissioner, Dhubri.

2. The petitioner, namely, Habibulla Sheikh was referred to the Foreigners' Tribunal No.1 Dhubri for an opinion as to whether he is a foreigner within the meaning of Foreigner Act, 1946 resulting in the registration of F.T.Case No.5334/D/2011 corresponding to Ref. Case No.197/08). The Tribunal rendered an opinion dated 22.08.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved this writ petition is instituted.

4. In the writ proceeding, the petitioner relies upon the voters list of 1966 of village Sastarghat Pt II in the Dhubri district which contains the name of Saritulla Sheikh son of Milan Sheikh at Sl.No.95 showing his age to be 50 years and that of Habibullah Sheikh son of Saritulla at Sl.No.101 showing his age to be 21 years. It is claimed that Habibullah Sheikh son of Saritulla of the 1966 voters list of village Sastarghat Pt II is the petitioner himself and Saritulla Sheikh is his father. Both are noticed to be residing in the same House No.37. The petitioner further relies upon the voters list of 1970 of the same village Sastarghat Part II containing the name of Saritulla Sheikh, son of Milan at Sl.No.69 and that of Habibullah son of Saritulla at Sl.No.75 and accordingly

claims that he had discharged the burden under Section 9 of the Foreigner Act 1946 to prove that he is a citizen of India.

5. But, however, for giving an opportunity to the respondents as to whether Saritulla father of Habibullah Sheikh of the 1966 voters list of village Sastarghat Part II at Sl.No.101 and Saritulla Sheikh son of Milan Sheikh of Sl.No.95 are one and the same person, a report from the Superintendent of Police (B) Dhubri was called for by the order dated 09.05.2023. Pursuant thereto, the Superintendent of Police (B) Dhubri has submitted a report dated 23.05.2023 before the Court which clearly mentions that Saritulla father of Habibullah Sheikh at Sl.No.101 of the voters list of 1966 of village Sastarghat Part II and Saritulla Sheikh son of Milan Sheikh at Sl.No.95 of the 1966 voters list of village Sastarghat Part II are one and the same person. The report also states that Habibullah Sheikh, son of Saritulla of the 1966 voters list of village Sastarghat Part II and the Habibullah Sheikh, the writ petitioner-proceedee before the Court are also one and the same person. As the name of the writ petitioner-proceedee also appears in the voters list of 1966 and 1970 of village Sastarghat Part II, it can be concluded that he is not a foreigner within the meaning of Foreigners Act 1946 read conjointly with Section 6 A of the Citizenship Act 1955. Accordingly Habibullah Sheikh, the writ petitioner is declared to be a person who is deemed to be a citizen of India under Section 6 A(2) of the Citizenship Act of 1955.

6. The exercise undertaken by the writ court in calling for the report of the Superintendent of Police (B) Dhubri as to whether Habibullah Sheikh the writ petitioner-proceedee and the Habibullah Sheikh of the 1966 voters list of village Sastarghat Part II are one and the same person, in our view also could have

been taken by the Tribunal itself with due application of mind on the issue involved.

7. Once a proceedee claims that his name appears in the voters list of 1966 or prior, it is for the Tribunal to undertake an exercise to identify as to whether the person referred in the voters list and the petitioner-proceedee before the Tribunal are one and the same person, rather than venturing into any other aspects of the matter. This order be circulated, amongst all the Tribunals to henceforth follow the procedure that if a given proceedee claims that his or her name appears in the voters list of 1966 or prior of any place, the endeavour to be made is to find out whether the person in the voters list as claimed and the proceedee before the Tribunal are one and the same person and only when the report may come that they are not one and same person, the matter may be proceeded on any other aspect.

8. This order be circulated amongst the Tribunals for further compliance.

9. In view of the aforesaid materials clinching the issue in favour of the petitioner, the petitioner deserves a declaration that he is deemed to be a citizen under Section 6 A(2) of the Citizenship Act of 1955 and it is declared accordingly.

10. Consequently, all such legal rights that may accrue to the petitioner Habibullah Sheikh upon such declaration be made available to him.

11. Writ petition, accordingly, stands allowed.
12. A copy of this order be furnished to Mr. G Sharma, learned counsel for the Home Department Government of Assam for doing the needful.
13. A copy of the report of the Superintendent of Police (B) Dhubri be kept as part of the record.
14. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant