

GAHC010312432019



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

Case No. : WP(C)/168/2020

MD. AKASH ALI
S/O- LT. ESHOB ALI, R/O- VILL- NO. 11 PAWOI, P.S. DIGBOI, DIST.-
TINSUKIA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECY. TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
BARPETA P.S. AND DIST.- BARPETA
ASSAM
PIN- 782105

4:THE SUPERINTENDENT OF POLICE (B)
TINSUKIA P.S. AND DIST.- TINSUKIA
ASSAM
PIN- 782105

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GHY-

Advocate for the Petitioner : MR. G P CHETIA
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

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

O R D E R

29.05.2023

(A.M. Bujor Barua, J)

Heard Mr. N Ahmed, 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 authorities in the NRC, Mr. G Sarma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. U Das, learned counsel for the Deputy Commissioner, Tinsukia.

2. The petitioner Md. Akash Ali had been referred to the Foreigners Tribunal, Tinsukia 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 F.T. Case No. 375/2007, wherein an opinion dated 17.07.2019 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner relies on the voters list of 1965 of village Katla Pathar in the Barpeta district, which contains the name of Esob Ali, son of Samer at serial No. 53. The petitioner also relies upon a Jamabandi in respect of a plot of land at village Katla Pathar, wherein it is contained that as per the order of the Circle Officer dated 05.02.2000 the name of, amongst others, Akkash Ali, son of Late Esob had been mutated in place of Esob Ali in respect of a plot of land in the same village.

4. If the information contained in the Jamabandi is correct that Akkas Ali son of Esob Ali had inherited land of Esob Ali in the same village Katla Pathar and the name of Esob Ali appears in the voters list of 1965 of village Katla Pathar, prima-facie, the petitioner may have discharged the burden under section 9 of the Foreigners Act, 1946.
5. In view of the above, we remand the matter back to the Tribunal to examine as to whether the writ petitioner Md. Akash Ali and Akkash Ali whose name was mutated in the Jamabandi in place of Esob Ali as per the order of the Circle Officer are one and the same person. The respondents in the Home Department may also make verification as on the aforesaid aspect and submit a report before the Tribunal. Upon doing the needful, the Tribunal may pass its reasoned order.
6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 17.07.2019 and if it goes against the petitioner, consequence as per law shall follow.
7. The petitioner shall appear before the concerned Foreigners Tribunal on 01.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.
8. The writ petition is allowed as indicated above.
9. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant