

GAHC010010782020



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

Case No. : WP(C)/628/2020

ABDUL RAJAK
S/O- ABDUL SALAM, R/O- BORBARI, P.S- MOIRABARI, DIST- MORIGAON,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 110001

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

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 05

4:THE DEPUTY COMMISSIONER
MORIGAON
ASSAM
PIN- 782105

5:THE ASSAM STATE COORDINATOR OF NRC
BHANGAGARH
GHY- 6

6:THE SUPERINTENDENT OF POLICE

MORIGAON
ASSAM
PIN- 78210

Advocate for the Petitioner : MR I RAFIQUE

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

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

ORDER

Date : 17.03.2023

(A.M. Bujor Barua, J)

Heard Mr. I. Rafique, learned counsel for the petitioner and Mr. B. Chakraborty, learned counsel for the respondent No. 1, being the Union of India. Also heard Mr. T. Pegu, learned counsel for the respondent No. 2, being the Election Commission of India; Ms. A. Verma, learned counsel for the respondents No. 3 and 6, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 4, being the Deputy Commissioner, Morigaon and Ms. L. Devi, learned counsel for the respondent No. 5, being the State Co-ordinator of the NRC.

2. The petitioner Abdul Rajak was referred to the Foreigners' Tribunal No. 2, Morigaon for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T.(D) Case No. 440/2012 was registered. The Tribunal rendered its opinion dated 30.09.2019 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of

village Roumari Bill, Mouza Lahorighat, P.S. Lahorighat in the Nagaon district wherein at Sl. No. 71 the name of A. Salam son of Jorip appears. The petitioner also relies upon the voters' list of 1970 of village Roumari Bill, Mouza Lahorighat, P.S. Lahorighat in the Nagaon district wherein at Sl. No. 67 the name of A. Salam son of Jorip appears. The petitioner also relies upon the voters' list of 1985 of village Pambori-(ka) Roumari (kha) Chutia Gaon, Mouza Lahorighat, P.S. Lahorighat in the Nagaon district wherein at Sl. No. 237 the name of A. Salam son of Jorin Hasin appears as well as the voters' list of 1989 of village Pambori-(ka) Roumari (kha) Chutia Gaon, Mouza Lahorighat, P.S. Lahorighat in the Nagaon district wherein at Sl. No. 417 the name of A. Salam son of Jorin and at Sl. No. 422 the name of A. Rajak son of A. Salam appear. The petitioner claims that A. Rajak of the voters' list of 1989 is the petitioner himself and A. Salam whose name appears in the voters' list of 1966, 1970, 1985 and 1989 as indicated above is his father.

4. In view of the specific claim of the petitioner, we remand the matter back to the Foreigners' Tribunal No. 2, Morigaon to examine as to whether the aforesaid four voters' list of 1966, 1970, 1985 and 1989 of village Roumari Bill/Pambori-(ka) Roumari (kha) Chutia Gaon establish that the petitioner is a citizen of India. In doing so, the Tribunal shall examine the authenticity of the four voters' list. The petitioner to also produce the complete voters' list from the year 1966 up to present of the villages concerned for further examination of the Tribunal. The Tribunal to also make further enquiry through the Superintendent of Police(B), Morigaon as to whether the petitioner proceedee who claims to be A. Rajak of the voters' list of 1989 of village Pambori-(ka) Roumari (kha) Chutia Gaon, Mouza Lahorighat, P.S. Lahorighat in the Nagaon district is in fact A. Rajak of the said voters' list or the proceedee is a person different from A. Rajak

from the said voters' list. Upon such examination, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 30.09.2019 in F.T.(D) Case No. 440/2012 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 20.04.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

J U D G E

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Comparing Assistant