

GAHC010014562019



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

Case No. : WP(C)/495/2019

SRIBASH BISWAS @ SRI SIBAS BISWAS
S/O- LT MAYER CHAND @ MAYURI CHAND BISWAS, R/O-
NIZGOBORDHAN, P.S. PRAGJYOTISHPUR, DIST- KAMRUP (M), ASSAM,
PIN- 781150

VERSUS

THE UNION OF INDIA AND 8 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 SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

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

PIN- 781005

5:THE FOREIGNERS TRIBUNAL KAMRUP (M) NO. 4
AT GHY
HEDAYATPUR
GHY-3
DIST- KAMRUP (M)
ASSAM

6:THE DY. COMMISSIONER
KAMRUP (M)
DIST- KAMRUP (M)
ASSAM
PIN- 781001

7:THE DY. COMMISSIONER OF POLICE (B)
CITY GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

8:THE SR. SUPERINTENDENT OF POLICE (B)
CITY GUWAHATI
KAMRUP (M)
ASSAM
PIN- 781001

9:THE OFFICER-IN-CHARGE OF PRAGJYOTISHPUR P.S.
P.O. PRAGJYOTISHPUR
DIST- KAMRUP (M)
ASSAM
PIN- 78115

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

**HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MRS. JUSTICE MITALI THAKURIA**

O R D E R

25.08.2023

(A.M. Bujor Barua, J)

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

CGC appearing for the respondents in the Union of India as well as for the respondents in the NRC, Mr. G Sarma, learned counsel for the respondents in the Home Department of the Government of Assam, Mr. T Pegu, learned counsel for the respondents in the Election Commission of India as well as Mr. P Sarma, learned counsel for the Deputy Commissioner, Kamrup(M).

2. The petitioner Sribash Biswas @ Sri Sibas Biswas was referred to the Foreigners Tribunal No. 4, Kamrup(M) for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of case No. F.T.K 1746/2017, wherein an order dated 11.10.2018 was passed whereby the petitioner was directed to file his written statement. Being aggrieved, the instant writ petition is instituted.

3. The petitioner takes a stand that there was an earlier proceeding against the petitioner in D.V Case No. 8716/2011 on the same issue as to whether the petitioner is a foreigner and in the said proceeding, an order dated 30.05.2014 was passed declaring the petitioner to be an Indian citizen. The petitioner is aggrieved to the extent that ignoring the principles of res-judicata, a fresh proceeding had been initiated against the petitioner on the same cause.

4. Although a substantial question of the application of the principles of res-judicata had been invoked in the present writ petition, but at the same time, the petitioner in order to discharge the burden under section 9 of the Foreigners Act, 1946, also relies upon the voters list of 1971 of village Ghoramara Janpar in the Morigaon district, which contains the name of Sribash son of Mayur Chand. The petitioner claims that Sribash son of Mayur Chand of the 1971 voters list is the writ petitioner himself. But, the certified copy of the voters list of 1971 of village Ghoramara Janpar is not available on record.

5. We have taken note that the name of Sribash continues to appear in the later voters list of village Nizgobordhan and it is claimed that Sribash of the voters list of village Nizgobordhan of the later years is the writ petitioner himself. It is sought to be explained that in the year 1971, there was a combined voters list of the area Ghoramara Janpar and Nizgobordhan and therefore, the name of the petitioner appeared in the said common voters list in the year 1971. But later on, two separate lists were issued for Ghoramara Janpar and Nizgobordhan and accordingly a question has arisen as to whether the subsequent voters list of Ghoramara Janpar and Nizgobordhan pertain to the same place. Accordingly, by our earlier order dated 14.06.2023, the respondents in the Home Department was required to make an enquiry and submit a report.

6. Accordingly, a report dated 11.08.2023 is placed before the Court, which shows that there was a detail enquiry in respect of the petitioner and the two enquiring police officials visited the house of the petitioner at village Nizgobordhan, police station Pragjyotishpur in the Kamrup(M) district and during the enquiry, statements of certain persons were recorded. The enquiry report also stated that the documents were also verified by the police officials and the name of the petitioner appears in the voter invitation card of 1971 and his name along with his wife and brothers and sister in law appears in the voters list of 1997. More importantly it is stated that Sribash son of Mayur Chand of village Ghoramara Janpar of the 1971 voters list and Sribash son of late Mayur Chand of Nizgobordhan are one and the same person. The report also states that village Ghoramara Janpar and Nizgobordhan are adjacent village and in the year 1971 there was only one polling station located at Ghoramara Janpar, but in the year 1986, one new polling station was set up and thereafter two separate lists

are being maintained. In view of the definite conclusions arrived at as indicated in the report of the Superintendent of Police dated 11.08.2023, it is accordingly accepted that the petitioner is not a foreigner under the Foreigners Act, 1946 and as such, he would be entitled to all such rights and privileges, entitlements as may be entitled under the law.

7. The proceeding initiated in Case No. F.T.K 1746/2017 before the Foreigners Tribunal No. 4, Kamrup (M) is answered accordingly.

8. As the reference had been substantially answered in Case No. F.T.K 1746/2017, which although may be a second reference against the same person on the same question of law, but as because the second reference had been substantially answered, we are not required to go in the question whether the F.T.K Case No. 1746/2017 would be barred by the principles of res-judicata. It is also taken note that in the earlier reference, the petitioner was declared to be an Indian citizen.

The writ petition is allowed to the extent as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant