

GAHC010027302018



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

Case No. : WP(C)/884/2018

HARIPAD KARMAKAR
S/O LT. JOGO DISH KARMOAKAR @ JAGADISH CH. KARMAKAR
VILL-MOIRABARI, P.S. MOIRABARI
DIST. MORIGAON, ASSAM, PIN - 782126.

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF INDIA,
HOME DEPARTMENT,
NEW DELHI-1, INDIA.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT

DISPUR
GUWAHATI-6.

3:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5
ASSAM

4:THE ELECTION COMMISSION OF INDIA

TO BE REP. BY THE COMMISSIONER

ASSAM ELEC. COMMN. BELTOLA

BASISTHA ROAD

HOUSEFED COMPLEX
GUWAHATI -6
ASSAM

5:THE DEPUTY COMMISSIONER

MORIGAON
DIST. MORIGAON
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)

MORIGAON
DIST. MORIGAON
ASSA

Advocate for the Petitioner : MR E AHMED

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

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

ORDER

Date : 23.06.2023
(AM Bujor Barua, J)

Heard Mr. Z Hammad, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 3 being the authorities under the Union of India and NRC respectively, Mr. G Sarma, learned counsel for the respondents no. 2 and 6 being the authorities under the Home Department of Government of Assam, Ms. U Das, learned counsel for the respondent no. 5 being the Deputy Commissioner, Morigaon and Mr. T Pegu, learned counsel for

the respondent no. 4 being the authorities under the Election Commission of India.

2. The petitioner Haripad Karmakar had been referred to the Foreigners' Tribunal No. 5, Morigaon for rendering an opinion as to whether he is a foreigner within the meaning of Foreigners Act, 1946, resulting in registration of Case No. F.T. 129/2016. The Tribunal rendered an opinion dated 30.08.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding the petitioner relies upon a transfer certificate issued by the Headmaster of the Bagodi Govt. Aided H.E. School at village Bhella in the present Barpeta district which contains the information that Haripada Karmakar S/O Jagadish Ch. Karmakar is a resident of village Pithadi.

5. In order to verify the authenticity of the information contained in the school certificate, we also required the Education Department to produce the admission register in original of Bagodi Govt. Aided H.E. School. Upon perusal of the admission register in original it is discernable that Haripada Karmakar was admitted in Bagodi Govt. Aided H.E. School on 26.05.1970 meaning thereby his presence in the State of Assam was established to be prior to 25.03.1971.

6. In view of the above, the matter stands remanded back to the Tribunal to examine the claim of the petitioner. The petitioner may produce any relevant documents which may show that Haripada Karmakar of village Pithadi as referred in the school certificate is otherwise a citizen. Upon doing the needful, the Tribunal to pass a reasoned order.

7. The petitioner to appear before the Tribunal on 02.08.2023.

8. If the order of the Tribunal is in favour of the petitioner, the same shall

prevail over the opinion dated 30.08.2017 passed in Case No. F.T. 129/2016 and if against, consequence under the law is applicable to the petitioner.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant