

GAHC010033302018



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

Case No. : WP(C)/1060/2018

NARAYAN BARMAN
S/O. LT. NAREN CHANDRA BARMAN @ NAREN BARMAN, R/O. VILL.
UTTAR SALMARA PART-I, P.S. ABHAYAPURI, DIST. BONGAIGAON
(ASSAM).

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, NEW DELHI.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
BONGAIGAON
P.O. AND DIST. BONGAIGAON
ASSAM.

4:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON.
P.O. AND DIST. BONGAIGAON
ASSAM

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI

6:THE STATE COORDINATOR

NATIONAL REGISTRAR OF CITIZENS (NRC)
ASSAM

Advocate for the Petitioner : MS. R CHOUDHURY

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

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

ORDER

Date : 31.03.2023
(AM Bujor Barua, J)

Heard Ms. R Choudhury, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC, respectively, Ms. A Verma, learned counsel for the respondents no. 2 and 4 being the authorities under the Home Department of the Government of Assam, Ms. M Dutta, learned counsel for the respondent 3, Deputy Commissioner, Bongaigaon and Mr. AI Ali, learned counsel for the respondent no. 5 being the Election Commission of India.

2. The petitioner Narayan Barman had been referred to the Foreigners' Tribunal No. 2, Bongaigaon at Abhayapuri 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 Case No. BNGN/FT-2/APR/229/2017 wherein an opinion dated 15.02.2018 had been referred by declaring the petitioner to be a foreigner.

3. It is stated that before the Tribunal the petitioner took the stand that the proceeding in BNGN/FT-2/APR/229/2017 is barred by the principle of res-

judicata inasmuch as there is an earlier opinion dated 29.11.2013 of the Foreigners Tribunal, Bongaigaon in BNGN/FT/Case No. 2914/07, wherein by an opinion dated 29.11.2013 the petitioner had been declared to be an Indian citizen.

4. The grievance raised is that while rendering the opinion dated 15.02.2018 in BNGN/FT-2/APR/229/2017 the Tribunal had not taken into consideration the claim of the petitioner that the proceeding itself is barred by the principle of res-judicata.

5. We have perused the earlier opinion dated 29.11.2013 in BNGN/FT/Case No. 2914/07 of the Foreigners Tribunal, Bongaigaon.

6. A reading of the opinion makes it prima facie discernable that it is a reasoned decision that had been rendered by the Tribunal declaring the petitioner to be an Indian citizen. The principle of res-judicate requires that there must be an earlier proceeding between the same parties and the earlier proceeding must be finally decided. The second condition precedent of the res-judicata that the earlier proceeding has to be finally decided appears to be satisfied in the present case as per the order dated 29.11.2013 in BNGN/FT/Case No. 2914/07. But on the other condition precedent as to whether the two proceedings is in respect of the two same parties, although the name of the proceedee appears to be Sri Narayan Ch. Barman, but the proceeding in BNGN/FT/Case No. 2914/07 is against Sri Narayan Ch. Barman of Durgapur (Betabari) P.S. Abhayapuri Dist. Bongaigaon whereas the proceeding in BNGN/FT-2/APR/229/2017 is against Narayan Barman, S/O Late Naren Ch. Barman, village Magumari, PS Abhayapuri.

7. Whether the two Narayan Barman are one and the same requires a

decision in order to arrive at any satisfaction as regards the first requirement of the principle of res-judicata.

8. Accordingly, the matter is remanded back to the Tribunal to examine as to whether Narayan Ch. Barman in BNGN/FT/Case No. 2914/07 and Narayan Barman in BNGN/FT-2/APR/229/2017 are one and the same person. If the conclusion is arrived that they are one and the same person, the principle of res-judicata would be applicable and the second proceeding would be not maintainable against the petitioner. Accordingly, the matter is remanded back to the Tribunal.

9. The petitioner to appear before the Tribunal on 10.05.2023.

10. 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