

GAHC010064552022



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

Case No. : WP(C)/2435/2022

SUNIL DAS
S/O- LT. SURESH DAS @ SURESH SARKER, R/O- VILL. KUMARBORI, P.S.
JAGIROAD, DIST. MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 7 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.-781006.

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

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005.

5:THE DY. COMMISSIONER
MORIGAON
P.O. AND P.S. MORIGAON
DIST.- MORIGAON
ASSAM
PIN- 782105.

6:THE FOREIGNERS TRIBUNAL NO. 1ST
MORIGAON
ASSAM
DIST.- MORIGAON
ASSAM
PIN- 782105.

7:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
P.O. AND P.S. MORIGAON
DIST.- MORIGAON
ASSAM
PIN- 782105.

8:THE OFFICER-IN-CHARGE OF JAGIROAD POLICE STATION
P.O.- JAGIROAD
DIST. MORIGAON
ASSAM
PIN- 782412

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

04.08.2023.

(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned counsel for the respondent No.1 & 4 being the Union of

India, Mr. G. Sarma, learned Counsel appearing for the Home Department, Government of Assam being the respondent No.2, 6, 7 & 8, Mr. T. Pegu, learned counsel for the respondent No.3 being the Election Commission of India and Ms. U. Das, learned Advocate for the respondent No.5 being the Deputy Commissioner, Morigaon.

2. The petitioner Sunil Das was referred to the Foreigners' Tribunal No.1, Morigaon for rendering an opinion as to whether he is a foreigner under the Foreigners Act, 1946, resulting in registration of Case No.F.T. 471/2010 (Police Reference F.T. Case No.175/2010, date 25.05.2010). The Tribunal rendered an opinion dated 14.11.2019, declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. In the writ proceeding, the petitioner relies upon the Relief and Rehabilitation Branch Certificate issued by the Deputy Commissioner, United Khasi and Jaintia Hills, Shillong in the year 1964, which contains the information that Suresh Ch. (illegible) son of Gopi Mohan (illegible) entered India on 18.02.1964 without any valid travel paper. The particulars of his family members contains the name of Ananta Bala Das wife of Suresh Ch. Das. It is claimed that Suresh Ch. (illegible) is actually ought to be Suresh Ch. Das. It is also claimed that Suresh Ch. Das is the father of the petitioner and to substantiate the same reference is made to the Voters List of 1997 of Village Kumarbari in the Morigaon District which contains the name of Sunil Das son of Suresh at Sl. No.238, along with Ananta Bala wife of Suresh at Sl. No.240.

4. As the name of Sunil Das son of Suresh appears along with Ananta Bala wife of Suresh and the Relief and Rehabilitation Branch Certificate contains the name of Ananta Bala Das wife of Suresh Das, which was issued in the name

of Suresh Ch. (illegible), it is claimed that the burden under Section 9 of the Foreigners Act has been discharged by the petitioner. But however the petitioner states that the Relief and Rehabilitation Branch Certificate of 1964 is produced for the first time before this Court in the Writ Proceeding and due to inadvertence, it could not be produced earlier.

5. In view of the above, the matter is remanded back to the Tribunal to allow the petitioner to produce the Relief and Rehabilitation Branch Certificate of 1964 as well as the Voters List of 1997 of Village Kumarbari in the Morigaon District, relied upon in this proceeding. The petitioner to also discharge the burden as to in whose name the Relief and Rehabilitation Branch Certificate of 1964 was issued and also that Ananta Bala wife of Suresh Ch. Das of the 1997 Voters List of Village Kumarbari in the Morigaon District are one and the same person.

6. The respondents in the Home Department to make their own verification and submit a report before the Tribunal. The report to be submitted by the Home Department, should be done through the Assistant Government Pleader, if available and under all circumstances, a copy thereof should also be provided to them.

7. The petitioner to appear before the Tribunal on 09.09.2023. In the event, the reasoned order is in favour of the petitioner, the same would prevail over the order dated 14.11.2019, passed in Case No.F.T. 471/2010 (Police Reference F.T. Case No.175/2010, date 25.05.2010) and if it is against him, the consequence under the law may follow.

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

9. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant