

GAHC010066142018



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

Case No. : WP(C)/2116/2018

RAI CHAND DAS AND 6 ORS.
S/O LT. BASHANTA DAS
R/O VILL- BARKHAL, P.S. JAGIROAD (NELLIE O.P.), DIST. MORIGAON,
ASSAM

2: SMT SUPRABHA DAS
W/O RAI CHAND DAS
R/O VILL- BARKHAL
P.S. JAGIROAD (NELLIE O.P.)
DIST. MORIGAON, ASSAM

3: SRI RAMJOI DAS
S/O SRI RAI CHAND DAS
R/O VILL- BARKHAL
P.S. JAGIROAD (NELLIE O.P.)
DIST. MORIGAON, ASSAM

4: SRI SARANJOI DAS @ SANJOY DAS
S/O SRI RAI CHAND DAS
R/O VILL- BARKHAL
P.S. JAGIROAD (NELLIE O.P.)
DIST. MORIGAON. ASSAM

5: SRI GOPINDRA DAS @ GOBINDA DAS
S/O SRI RAI CHAND DAS
R/O VILL- BARKHAL
P.S. JAGIROAD (NELLIE O.P.)
DIST. MORIGAON, ASSAM

6: SRI SANJIT DAS
S/O SRI RAI CHAND DAS
R/O VILL- BARKHAL
P.S. JAGIROAD (NELLIE O.P.)
DIST. MORIGAON, ASSAM

7: SRI BISWAJIT DAS
S/O SRI RAI CHAND DAS
R/O VILL- BARKHAL
P.S. JAGIROAD (NELLIE O.P.)
DIST. MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA,
SHASTRI BHAWAN,
NEW DLEHI.

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPARTMENT
DISPUR, GUWAHATI -781006.

3:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON, ASSSM

4:THE DEPUTY COMMISSIONER
DEPUTY COMMISSIONERS OFFICE
MORIGAON
ASSAM, PIN - 782105.

5:THE OFFICER-IN-CHARGE
JAGIROAD POLICE STATION
DIST. MORIGAON, ASSAM

6:THE STATE COORDINATOR
OFFICE OF THE STATE COORDINATOR
NRC ASSAM, 1ST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI
ASSAM, PIN - 781005.

7:THE ELECTION COMMISSIONER OF INDIA
ASHOKA ROAD
NEW DELHI- 110001

Advocate for the Petitioner : MS. D GHOSH
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

20-09-2023

(L.S. Jamir, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned Central Government Counsel, appearing on behalf of respondent Nos. 1 and 6; Mr. G. Sarma, learned standing counsel, Foreigners' Tribunal, for respondent Nos. 2, 3 and 5; Mr. P. Sarma, learned Government Advocate appearing on behalf of respondent No. 4 as well as Mr. A.I. Ali, learned standing counsel, Election Commission of India, for respondent No.7.

2. Being aggrieved by the order dated 30-10-2017, passed by the Foreigners' Tribunal No. 1, Morigaon, in Case No. F.T.(C) 741/2010, whereby the petitioners were declared as foreigners under Section 2(a) of the Foreigners' Tribunal Act, 1946, who had illegally entered into India (Assam) after 25-03-1971, the petitioners are before this Court.

3. The learned counsel for the petitioners submits that the petitioner No. 1, namely, Rai Chand Das, expired on 10-06-2018 after filing of the present writ petition and as the right to sue survived, the petitioner Nos. 2 to 7, who are the wife and children of the petitioner No. 1 were impleaded as legal heirs by filing the I.A. (Civil) No. 1851/2023. The learned counsel for the petitioner further submits that the petitioner No. 1 has exhibited 1971 Voters' List of village Palashguri, wherein the name of the petitioner No. 1, Late Rai Chand Das, appeared at Sl. No. 383 as Ext. A. It is also submitted that the petitioner No. 1

had migrated from East Pakistan on the ground of religious persecution in the year 1964 and the petitioner No. 1 was in possession of Identity Certificate, certifying that he was a *bonafide* camp inmate of Srirampur Relief Camp, district Goalpara, Assam, in the year 1964. However, the same could not be exhibited before the Tribunal due to some communication gap between the petitioner and the learned counsel.

4. The learned counsel for the petitioner further submits that initially an enquiry was conducted against the petitioner No. 1, thereafter, reference was made by the Superintendent of Police (Border), Morigaon, with regard to

Petitioner No. 1, namely late Rai Chand Das, and not with regard to other petitioners. However, the Tribunal issued notice to all the petitioners to appear before the Tribunal on 19-09-2016. Accordingly, the petitioners appeared before the Tribunal and filed their written statement on 01-07-2017. However, as the reference was only concerned with regard to the petitioner No. 1, the proceedings against the petitioner Nos. 2 to 7 in F.T.(C) Case No. 471/2010 before the Foreigners' Tribunal No. 1, Morigaon, stands vitiated.

5. On perusal of the order dated 30-10-2017, passed by the Tribunal, we find that the Tribunal considered the Voters' List of 1971 wherein the name of the petitioner No. 1, namely, Rai Chand Das appeared. However, no discussion was made on the said Voters' List and it was only concluded that the petitioner No. 1 as well as his purported brother, Jai Chand Das, could have casted vote in 1966. However, except the Voters' List of 1971, not a single other Voters' List is exhibited to substantiate the link with the petitioner No.1.

6. We have also taken into consideration the Identity Certificate, which certifies that the petitioner No. 1 was a camp inmate of Srirampur Relief Camp

in 1964. Under such circumstances, we are of the opinion that the matter requires to be remanded back to the Tribunal insofar as the status of the deceased/petitioner No. 1 is concerned.

7. Accordingly, the order dated 30-10-2017, passed by the Foreigners' Tribunal No. 1, Morigaon, in F.T.(C) Case No. 471/2010, is set aside and quashed.

8. The matter is remanded to the Foreigners' Tribunal No. 1, Morigaon, for fresh adjudication. The representative of the deceased/petitioner No 1, Late Rai Chand Das, shall appear before the Foreigners' Tribunal No. 1, Morigaon, on **08-11-2023**. Upon such appearance, the Tribunal shall proceed in accordance with law.

9. With regard to declaration of the wife and children of the petitioner No. 1 to be foreigners, we have perused the records and the same indicates that the reference was made only against the petitioner No. 1 and not against the petitioner Nos. 2 to 7. In that view of the matter, we are of the considered opinion that there is procedural aberration in the proceedings made against the petitioner Nos. 2 to 7. Accordingly, the relevant portion of the order dated 30-10-2017, passed by the Foreigners' Tribunal No. 1, Morigaon, in F.T.(C) Case No. 471/2010, by which the wife of the petitioner No. 1, Smti Suprabha Das and his five sons, namely, Shri Ramjoi Das, Shri Saranjoi Das @ Sanjoy Das, Shri Gobindra Das @ Gobinda Das, Shri Sanjit Das and Shri Biswajit Das, who were declared to be foreigners, are also set aside and quashed.

10. It is made clear that the proceeding of F.T.(C) Case No. 471/2010, before the Foreigners' Tribunal No. 1, Morigaon, shall be proceeded only against the deceased petitioner No. 1, through his representative.

11. Liberty is also granted to the concerned authority to initiate an inquiry and make a reference against the petitioner Nos. 2 to 7, if so advised. However, it is made clear that without following the due procedure of law of conducting an inquiry and making a reference and being adjudicated by the Tribunal, the petitioner Nos. 2 to 7 cannot be declared as foreigners.

12. With the above observations and directions, the writ petition is accordingly disposed of.

13. Send down the records forthwith.

JUDGE

JUDGE

Comparing Assistant