

GAHC010074152021



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

Case No. : WP(C)/3807/2021

DILIP BISWAS
S/O LATE BANABASHI BISWAS @ BANABASHI RAI,
RESIDENT OF VILLAGE MURKATA, PS MAYONG, DIST MORIGOAN,
ASSAM, 782402

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
SHASTRI BHAWAN, NEW DELHI 110001

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

3:THE MEMBER

FOREIGNERS TRIBUNAL . FIRST
MORIGAON
ASSAM
782105

4:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
ASSAM
782410

5:THE DEPUTY COMMISSIONER

OFFICE OF THE STATE CO ORDINATOR OF NRC
ASSAM
FIRST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI
ASSAM 781005

6:THE ELECTION COMMISSION OF INDIA.
ASHOKA ROAD
NEW DELHI 11000

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 27.06.2023

(A.M. Bujor Barua, J)

Heard Ms. D. Ghosh, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 3 and 4, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 5, being the Deputy Commissioner, Morigaon and Mr. T. Pegu, learned counsel for the respondents No. 7, being the authorities in the Election Commission of India.

2. The petitioner Dilip Biswas was referred to the Foreigners' Tribunal No. 1, Morigaon for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946 and accordingly Case No. F.T.151/2007 was registered. The Tribunal had rendered its opinion dated

22.11.2019 by arriving at its conclusion that the petitioner is a foreigner within the meaning of foreigner under the Foreigners Act, 1946. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village Barungurigaon, PS Laharighat in the Nagaon district which contains the name of Banabashi Biswas son of Kartik at Sl. No. 132. It is claimed that Banabashi Biswas is the father of the petitioner. Reliance is also placed upon a Jamabandi of a plot of land at village Barunguri wherein the names of Nathuram Biswas, Dabari Biswas, Tusta Mohan Biswas, Sukumar Biswas, Dulal Biswas and Dilip Biswas have been mutated in place of Banabashi Biswas. But the voters' list of 1985 of village Barunguri contains the names of Banabashi Ray son of Kartik, Durga Devi, Bimal, Kolapati, Nathu, Adori, Tushtu, Saraswati, Sukuram, Dulal and Dilip as the wife, sons and daughters of Banabashi Ray. Again voters' list of 1997 of village Hiloikhunda contains the names of Sukumar Biswas son of Banabashi, Durga Biswas wife of Banabashi, Bimal, Kolapati, Dulal, Dilip, Tusta all sons of Banabashi.

4. The Tribunal had rejected the claim of the petitioner on the premises that in certain documents the family is bearing the surname 'Ray' wherein in other documents they are bearing the surname 'Biswas'.

5. We have perused the Jamabandi, the voters' lists of 1966 of village Barunguri, the voters' list of 1997 of village Hiloikhunda containing the surname 'Biswas' and the voters' list of 1985 of village Barunguri containing the surname 'Ray'. It is clarified by the petitioner that after 1985, the family had shifted to village Hiloikhunda from village Barunguri. In the circumstance, two issues have arisen as to whether the family having surname 'Ray' and the family having surname 'Biswas' are one and the same family and secondly, whether the same

family had shifted to village Hiloikhunda from village Barunguri. On the aspect of shifting from village Barunguri to village Hiloikhunda, it is noticed in the voters' list of 1985 of village Barunguri contains the names of the family members as extracted:

“Voters’ List:1985

*State: Assam District:Nagaon P.S: Lahorighat Voting centre: Barunguri
Primary School, Part no: 13 Centre no:13*

Sub-div: Marigaon Mouza: Bokoni

Village: Barunguri, 1) 2 no

Barunguri 2) Kathpori

<i>Serial no:</i>	<i>House no.</i>	<i>Voter's Name</i>	<i>Father/ Husband's name</i>	<i>Gender</i>	<i>Age</i>
570	52	Bonobashi Ray	Kartik	Male	70
571		Durga Devi	Bonobashi	Female	40
572		Bimal	Bonobashi	Male	30
573		Kolapati	Bimal	Female	30
574		Nathu	Bonobashi	Male	35
575		Adori	Nathu	Female	25
576		Tushtu	Bonobashi	Male	35
577		Saraswati	Tushtu	Female	21
578		Sukuram	Bonobashi	Male	25
589		Dulal	Bonobashi	Male	22
580		Dilip	Bonobashi	Male	21”

6. Whereas the voters' list of 1997 of village Hiloikhunda contains the names of the family members as extracted:

“61 no, Legislative Assembly Constituency, Voters’ list: 1997

State: Assam District: Darrang Sub-division: Mangaldai P.S: Mangaldai

Voting centre no- 139 Mouza: East Rangamati, Part no: 139 Voting

centre name : No:3 Nanglichar Primary school, Village of Voting centre:
No.3 1)Nanglichar, 2)hiloikhunda, 3)Chadrachar, 4)Kajiarachar,
Village: 2) Hiloikhunda.

Serial no:	House no.	Voter's Name	Father/ Husband's name	Gender	Age
371	44	Sukumar Biswas	Bonobashi Biswas	Male	60
372		Durga Biswas	Bonobashi Biswas	Female	52
373		Bimal	Bonobashi Biswas	Male	45
374		Kalapati	Bimala	Female	37
375		Dulal	Bonobashi Biswas	Male	40
376		Dilip	Bonobashi Biswas	Male	37
377		Tushtu	Bonobashi Biswas	Male	35"

7. It is noticed that the family members whose names appear in the voters' list of 1985 of village Barunguri en bloc also appear in the voters' list of 1997 of village Hiloikhunda which itself may be an indication that the entire family may have shifted or else, it would be a case where there exists two different families in two different villages where the names of all the seven family members happen to be same with each other which may be again an unusual proposition. As regards the changing of the surname from 'Ray' to 'Biswas', it is again noticed that the same seven names of the family en bloc in the voters' list of 1985 is shown to be having the surname 'Ray' whereas in the voters' list of 1997, they are shown to be having the surname 'Biswas'. In the Jamabandi which contains the mutation order, it is noticed that the same family members en bloc are also shown in the Jamabandi where the surname is indicated as

'Biswas'. From such point of view, there is a prima facie possibility that the same family is shown to be having the surname 'Ray' in certain documents and at the same time, the surname is shown as 'Biswas' in some other documents.

8. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 1, Morigaon to examine the matter in its entirety as indicated above. The petitioner may produce any further material before the Tribunal, if so advised, to substantiate the aforesaid issue. The State respondents in the Home Department may also make their own verification and thereafter submit a report before the Tribunal.

9. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 22.11.2019 in Case No. F.T.151/2007 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 03.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant