

GAHC010074592018



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

Case No. : WP(C)/2556/2018

TULASI SAHA
S/O LT. BHABATOSH SAHA,
R/O DOTMA BAZAR, P.O. AND P.S. DOTMA,
IN THE DIST. OF KOKRAJHAR (BTAD), ASSAM, PIN - 783347.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI-1.

2:CHIEF ELECTION COMMISSION OF INDIA

NEW DELHI-1.

3:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY
HOME DEPARTMENT

DISPUR
GUWAHATI-06.

4:THE DIRECTOR GENERAL OF POLICE

ULUBARI
GUWAHATI - 781005.

5:THE DEPUTY COMMISSIONER

KOKRAJHAR
P.O.

P.S. AND DIST. KOKRAJHAR
ASSAM
PIN - 783360.

6:THE SUPERINTENDENT OF POLICE (B)

KOKRAJHAR
P.O.
P.S. AND DIST. KOKRAJHAR
ASSAM
PIN - 783360.

7:THE ELECTORAL REGISTRATION OFFICER

29 NO. KOKRAJHAR WEST (ST) LAC CUM ELECTION OFFICER
GOSSAIGOAN
DIST. KOKRAJHAR
ASSAM
PIN - 783360

For the Petitioner(s) : Ms. N. Nasrin, Advocate
For the Respondent(s) : Mr. A. I. Ali, Advocate
: Mr. B. Rajkhowa, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 07.08.2023

1. The instant writ petition has been filed by the Petitioner being aggrieved by the order dated 27.02.2016 issued by the Electoral Registration Officer, 29 Kokrajhar West (ST) LAC, an Election Officer, Gossaigaon whereby the Petitioner's name at Serial No.2 was struck off from the Electoral Roll, 2016.
2. From a perusal of the materials on record, it transpires that there was a proceeding initiated under the Foreigners Act, 1964 against the father of the Petitioner in F.T. Case No.227/K/86. Vide an order dated 09.04.1998, the

Foreigners Tribunal, Dhubri, Goalpara and Kokrajhar had opined that the father of the Petitioner was a foreigner of 1966-71 stream on 27.10.1986 but could not register his name within scheduled time, so the petitioner's father was allowed time till 09.06.1998 to get his name registered by F.R.R.O. It is however relevant to take note of that the Petitioner's father expired on 02.02.1991 as could be seen from the Annexure-5 to the said writ petition.

3. It further appears that in another proceedings being Case No.342/K/86, the Foreigners Tribunal, ex-parte passed an order declaring the mother of the Petitioner as a foreigner of 1966-71 stream vide an order dated 03.06.1994. It however appears that yet another proceedings was initiated against the mother of the Petitioner being Case No. K/FT/D/450/06(B/KJR/DOUBTFUL IM/98/2811). The Foreigners Tribunal, Kokrajhar vide an order dated 06.04.2011 on the basis of the documents so placed, the prosecution side did not adduce any witness to prove and taking into account the materials on record, observed that the mother of the Petitioner was not a foreigner and her name should not have been recorded in the D-Voter list.

4. It is the further case of the Petitioner that the Petitioner was issued an Identity Card by the Election Commission of India, Aadhaar Card by the Unique Identification Authority of India, PAN Card by the Income Tax Department as well as his name was duly enrolled in the Electoral Rolls. Subsequent thereto, vide the impugned order dated 27.02.2016, the Petitioner's name was struck off on the basis of FT Case and Courts order bearing No.B/FTC/86/79 dated 10.07.1986 and 27.10.1986. No affidavit has been filed although notice was issued as far back as on 27.04.2018.

5. Mr. A. I. Ali, the learned Standing counsel for the Election Commission of India had submitted a bunch of documents to justify the action taken by the

Electoral Registration Officer to strike out the name of the Petitioner. From the documents so available, it transpires that the Election Registration Officer had issued the impugned order insofar as against the Petitioner on the basis of a communication issued by the Superintendent of Police, (B) Kokrajhar dated 29.12.2015 to the District Election Officer, Gossaigaon. In the said communication, there was a list wherein the Petitioner's name can be seen at Serial No.2 in respect of list of full particulars of declared foreigners of Pre-1971 and Post-1971 who were declared by the Foreigners Tribunal, Kokrajhar and there is a further reference made to the orders so passed in FT Case as well as the Courts order.

6. This Court enquired with the learned Standing counsel of the ECI as regards the orders so passed however nothing could be produced before this Court to that effect.

7. Taking into account that there has been no affidavit filed and the only materials on record so produced by Mr. A. I. Ali, the learned Standing counsel for the Election Commission of India do not show any order so passed by the FT against the Petitioner, this Court is of the opinion that the order dated 27.02.2016 insofar as the Petitioner is concerned requires to be interfered with taking into account that the same has been done without any basis.

8. Accordingly, the impugned order dated 27.02.2016 insofar as the Petitioner is concerned is set aside and quashed. The Electoral Registration Officer, 29 Kokrajhar West (ST) LAC is directed to restore the name of the Petitioner in the Electoral Rolls within 15 days from the date a certified copy of this order is served upon him.

9. This Court however makes it clear that if the officials i.e. the Electoral

Registration Officer is able to trace out any orders of the Foreigners Tribunal against the Petitioner declaring the Petitioner as foreigner, the Electoral Registration Officer would be at liberty to take appropriate steps by providing the Petitioner a reasonable opportunity of hearing.

10. The documents so placed by the Standing counsel of the ECI is kept on record and marked with the letter "X".

11. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant