

GAHC010114222019



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

Case No. : WP(C)/3507/2019

AMARCHAND DAS AND 5 ORS.
S/O. LT. KRISHNA DAS, VILL. BAHA UNNATAPARA, P.S. MAYONG, DIST.
MORIGAON, ASSAM-782411.

2: SMT. AMAYA DAS
W/O. AMARCHAND DAS
VILL. BAHA UNNATAPARA
P.S. MAYONG
DIST. MORIGAON
ASSAM-782411.

3: SUBHASH DAS
S/O. AMARCHAND DAS
VILL. BAHA UNNATAPARA
P.S. MAYONG
DIST. MORIGAON
ASSAM-782411.

4: NIBASH DAS
S/O. AMARCHAND DAS
VILL. BAHA UNNATAPARA
P.S. MAYONG
DIST. MORIGAON
ASSAM-782411.

5: SRIBASH DAS
S/O. AMARCHAND DAS
VILL. BAHA UNNATAPARA
P.S. MAYONG
DIST. MORIGAON
ASSAM-782411.

6: SMT. ARATIBALA DAS
D/O. AMARCHAND DAS

VILL. BAHA UNNATAPARA
P.S. MAYONG
DIST. MORIGAON
ASSAM-782411

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI-110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE ELECTION COMMISSION OF INDIA

REP. BY THE CHIEF ELECTION COMMISSION
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-781005.

5:THE FOREIGNERS TRIBUNAL NO.4TH

MORIGAON
ASSAM
DIST. MORIGAON
ASSAM-782105.

6:THE DY. COMMISSIONER

MORIGAON
P.O. AND P.S. MORIGAON
DIST. MORIGAON
ASSAM

PIN-782105.

7:THE SUPDT. OF POLICE (B)

MORIGAON
P.O. AND P.S. MORIGAON
DIST. MORIGAON
ASSAM-782105.

8:THE OFFICER IN CHARGE OF MAYONG POLICE STATION

P.O. MAYONG
DIST. MORIGAON
ASSAM-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

Date : 04.05.2023
(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioners. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. T Pegu, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India, Mr. G Sarma, learned counsel for the respondents no. 5 being the authorities under the Home Department of the Government of Assam and Ms. K Phukan, learned counsel for the respondent no. 6 being the Deputy Commissioner, Morigaon.

2. The petitioner no. 1 Amarchand Das had been referred to the Foreigners'

Tribunal No. 4, Morigaon 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 FT Case No. 124/2016. The Tribunal rendered an opinion dated 28.12.2018 declaring the petitioner to be a foreigner and accordingly, his other family members i.e. the petitioner No. 2 Amaya Das, petitioner No. 3 Subhash Das, petitioner No. 4 Nibash Das, petitioner No. 5 Sribash Das and petitioner No. 6 Aratibala Das were also declared to be foreigners where the petitioners No. 3 to 6 are the sons and daughters of petitioner no. 1 Amarchand Das and the petitioner No. 2 Amaya Das is the wife of Amarchand Das.

3. In the writ proceeding, Ms. D Ghosh, learned counsel for the petitioners brings it to the notice of the Court the Exhibit-1(i) which is available in the record, which is an identity card issued in the name of Krishna Das by the authorities for the purpose of camp registration. It is the stated case of the petitioner that Krishna Das and his other family members migrated from the erstwhile East Pakistan sometime in the year 1964 in view of religious persecution in that country and he was an inhabitant of the rehabilitation camp where the identity card was issued. The identity card contains the name of Krishna Das in whose favour the identity card was issued as well as Amarchand Das who is shown to be son of Krishna Das.

4. The petitioner claims that he himself is Amarchand Das of the identity card Exhibit-1(i) and therefore, he has discharged the burden under Section 9 of the Foreigners' Act, 1946 that he is a citizen of India.

5. No reason is forthcoming in the order of Tribunal as to why Exhibit-1(i) identity card has been discarded.

6. From such point of view, the matter is remanded back to the Tribunal to examine as to whether Amarchand Das whose name is included in the Exhibit-1(i) identity card and the petitioner proceedee Amarchand Das are one and the same person and if yes, to pass a reasoned order on the citizenship of Amarchand Das. It is also stated that Krishna Das in whose favour the identity card was issued was included in the voters' list of 1971 of village Bordoloni of the present Morigaon district and he had also casted his vote.

7. The respondents in the Home Department may make their own verification as to whether Amarchand Das whose name is included in the Exhibit-1(i) identity card and the petitioner proceedee Amarchand Das are one and the same person.

8. However, the opinion rendered in respect of petitioners no. 2 to 6 also requires an interference inasmuch as per the law laid down in *Sudhir Roy v. Union of India and others reported in 2019 (1) GLT 353*, in order to be declared as foreigners the other family members are also required to be proceeded separately and they cannot be declared to be foreigners merely on the basis of the head of the family being declared to be a foreigner where a proceeding is initiated only against the head of the family.

9. From such point of view the opinion rendered against the petitioners no. 2 to 6 are set aside. It is further stated that if Amarchand Das can prove his citizenship there would be no further requirement to proceed against the petitioners no. 3 to 6 being the sons and daughter of Amarchand Das. On the other hand, if the decision rendered is contrary and Amarchand Das is declared to be not a citizen of India, in such event it would be open for the respondents in the Home Department to issue appropriate process to proceed against the petitioners no. 3 to 6. In respect of the petitioner No. 2 Amaya Das as she is the

wife of Amarchand Das, liberty remains with respondents in the Home Department to proceed against Amaya Das if so advised but by strictly following the procedure of law.

10. The petitioner no. 1 to appear before the Tribunal on 16.06.2023.

11. If the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 28.12.2018 passed in F.T. Case No. 124/2016 and if against, consequence under the law is applicable to the petitioner.

12. Till the reasoned order is passed, no coercive action be taken against the petitioners.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant