

GAHC010137712019



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

Case No. : WP(C)/4175/2019

SUKHMAY DEBNATH @ SUKHMAI DEBNATH
S/O- LATE RASHMAY DEBNATH, R/O- VILL- KADAMTALA, P.S-
SILAPATHAR, DIST- DHEMAJI, ASSAM, PIN- 787059

VERSUS

THE UNION OF INDIA AND 6 ORS
THROUGH THE SECRETARY, MIN OF HOME AFFAIRS, GOVT OF INDIA,
NEW DELHI- 110001

2:THE STATE OF ASSAM
THROUGH THE SECRETARY
GOVT OF ASSAM
HOME DEPTT
GUWAHATI- 781006

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007

4:THE SUPERINTENDENT OF POLICE (B)
DHEMAJI
DIST- DHEMAJI
PIN- 787057

5:THE DEPUTY COMMISSIONER
DHEMAJI
ASSAM
PIN- 787057

6:THE ELECTION COMMISSION OF INDIA

THROUGH THE ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

7:THE STATE COORDINATOR
NRC
GUWAHATI- 78100

Advocate for the Petitioner : MR. R ALI

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

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

ORDER

Date : 22.02.2023
(A.M. Bujor Barua, J)

Heard Mr. R Ali, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 7 being the authorities under the Union of India and NRC, Mr. G Sarma, learned counsel for the respondents no. 2, 3 and 4 being the authorities under the Home Department of the Government of Assam, Mr. A Ali, learned counsel for the respondent no. 6 being the Election Commission of India and Mr. T R Gogoi, learned counsel for the respondent no. 5 being the Deputy Commissioner, Dhemaji.

2. The petitioner Sukhmay Debnath @ Sukhmai Debnath was referred to the Foreigners' Tribunal No. 2, Dhemaji at Silapathar for an opinion as to whether he is a person who entered the State of Assam from the specified territory subsequent to 25.03.1971 resulting in registration of FT (2nd) Case No. 349/2017. The petitioner relies upon the voters' list of 1966 of village Silabhairabpur of Dhemaji sub-division of Lakhimpur district wherein the name of Ramesh Ch. Nath, S/O Lochan appears at Sl. No. 577 and Rashmay, S/O Lochan appears at Sl. No. 581. The petitioner also relies upon the voters' list of 1971 of village Silabhairabpur

where again the name of Ramesh Ch. Nath, S/O Lochan appears at Sl. No. 577 and Rashmay, S/O Lochan appears at Sl. No. 581. The petitioner claims that Rashmay, S/O Lochan is his father.

3. The petitioner also relies upon the voters' list of 1979 of village No. 2, Bhairabpur wherein at Sl. No. 831 the name of Rashmay Nath, S/O Lochan appears.

4. The petitioner thereupon refers to the voters' list of 1997 of village Kadamtala under Silapathar PS where at Sl. No. 658 the name of Sukhmay Debnath, S/O Rashmay appears. Accordingly, it is the claim of the petitioner that Rashmay of the voters' list of 1997 of village Kadamtala and Rashmay of voters' list of 1966, 1971 and 1979 of village Silabhairabpur is one and the same person. To substantiate the claim the petitioner brings the evidence of Raj Kumar Nath, S/O Ramesh Ch. Nath whose name appeared in the voters' list of 1966 and 1970 of village Silabhairabpur where the names of Ramesh Ch. Nath and Rashmay, both sons of Lochan, also appear.

5. Raj Kumar Nath in his deposition states that the petitioner is his cousin brother being the son of his paternal uncle.

6. Considering the aforesaid material, we remand the matter back to the Tribunal to enable the petitioner to produce any further voters' list of Silabhairabpur as well as Kadamtala which may indicate whether the father of the petitioner Rashmay had migrated from village Silabhairabpur to village Kadamtala as well as to further examine Raj Kumar Nath for a detail deposition on the father of the petitioner having shifted from village Silabhairabpur to village Kadamtala and Raj Kumar Nath may appropriately be cross examined by the State authorities to bring forth the actual facts involving in the matter.

7. The petitioner to appear before the Tribunal on 31.03.2023.

8. Any reasoned order that the Tribunal may pass if in favour of the petitioner shall prevail over the order dated 11.03.2019 in F.T. Case No. 349/2017 passed by the Foreigners' Tribunal No. 2, Dhemaji at Silapathar and if against the petitioner, the implication of law shall prevail.

9. Send back the LCR forthwith.

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

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant