

GAHC010159012019



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

Case No. : WP(C)/5246/2019

SIBENDRA BAISHYA @ SIBEN BAISHYA
S/O. OT. JITENDRA CHANDRA BAISHYA @ JITEN SARKAR, VILL.
NICHALAMARI, P.S. BARAMA, DIST. BAKSA, BTAD, ASSAM, PIN-781367

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE HOME AFFAIRS, NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

3:THE SUPDT. OF POLICE (B)

BAKSA
ASSAM
PIN-781343.

4:THE DY. COMMISSIONER

BAKSA

ASSAM
PIN-781343.

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI-110001.

6:STATE CO-ORDINATOR

NRC
ASSAM
BHANGAGARH
GUWAHATI-781005.

7:THE FOREIGNERS TRIBUNAL

BAKSA
TAMULPUR
P.O. TAMULPUR
DIST. BAKSA
ASSAM
PIN-781367

Advocate for the Petitioner : MR. S C PANDIT

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

21.08.2023

(A.M. Bujor Barua, J)

Heard Mr. S. C. Pandit, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC appearing on behalf of respondents in the Union of India and the authorities under the NRC being the respondent Nos.1 & 6, Mr. H. K. Hazarika, learned Government Advocate for the State respondents being the respondent No.4, Mr. G. Sarma, learned standing counsel representing the respondents Nos. 2, 3 & 7, being the Foreigner Tribunal, and Mr. A. Ali, learned counsel for the Election Commission of India being respondent No.5.

2. The petitioner, namely, Sri Sibendra Baishya @ Siben has been referred to the Foreigners' Tribunal, Baksa at Tamulpur for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of F. T. Case No. 696/Baksa/2016. The Tribunal rendered an opinion dated 27.07.2018 by declaring the petitioner to be a foreigner. Being aggrieved this Writ Petition is instituted.

3. In the Writ Petition, the petitioner relies upon the registered Sale Deed No. 1205/64 dated 20.02.1964, by which Jitendra Ch. Baishya, son of Abhay Ch. Baishya of Village Nichalamari, Police Station Barama in the present Baksa District had purchased a plot of land. He also relies upon the Certificate of Registration issued by the Sub-Deputy Collector, Tihu Circle, by which it was certified that Jitendra Ch. Baishya son of Abhay Ch. Baishya, aged about 30 years of Village of Nichalamari, Police Station Barama had been registered as a Citizen of India under Section (5) (1) (a)/ (d) of the Citizenship Act, 1955. The petitioner further relies upon the voters list of 1965 of Village Nichalamari, Police Station Barama, which contains the name of Jitendra Chandra Sarkar son of Abhay at Sl. No.257 and house No.94. He also relies upon the voters list of 1997 of Village Nichalamari, Police Station Barama, which contains the name of Siben Baishya son of Jitendra at Sl. No.133 and house No.41. It is claimed that the Siben Baishya of 1997 voters list is the writ petitioner himself and as he is shown to be the son of Jitendra Ch. Baishya and the name of Jitendra Chandra Sarkar appears in the voters list of 1965 of Village Nichalamari, accordingly, the petitioner has discharged the burden under Section 9 of the Foreigners Act, 1946.

4. Mr. G. Sarma, learned Standing counsel representing the Home Department has raised an objection that the Certificate of Registration of Citizenship relied upon by the petitioner as well as the Sale Deed dated 20.02.1964, by which Jitendra Ch. Baishya had purchased a plot of land in the

Village Nichalamari are at a variance inasmuch as, the Sale Deed shows the name to be Jitendra Ch. Baishya whereas the voters' list of 1965 of the same Village Nichalamari shows the name to be Jitendra Chandra Sarkar.

5. Be that as it may, the 1997 voters list do establish that Siben Baishya is the son of Jitendra of Village Nichalamari, Police Station Barama.

6. A reading of the Sale Deed of Village Nichalamari of the year 1964 and the Certificate of Registration of Citizenship as indicated above as well as the voters list of 1965 of Village Nichalamari would go to show that whether it is Jitendra Ch. Baishya or Jitendra Chandra Sarkar, in either case the person existed in the year 1965, which shows that even otherwise the person would be a deemed citizen. Whether the 1997 voters' list shows Siben Baishya to be the son of Jitendra Ch. Baishya or shows him to be the son of Jitendra Chandra Sarkar, in either case, he would be the son of a person, who otherwise would be a Citizen.

7. No other material is produced before the Court that Siben Baishya of the voters' list of 1997 and the writ petitioner, proceede Sibendra Baishya are different persons. In fact, Siben Baishya of 1997 voters' list is of Village Nichalamari and the writ petitioner, Sibendra Baishya is also of Village Nichalamari.

8. In view of the overwhelming materials as indicated above, that Siben Baishya of the 1997 voters' list of Village Nichalamari and the writ petitioner, Sibendra Baishya of Village Nichalamari are one and the same person and

Sibendra Baishya @ Siben is the son of Jitendra, whether, it is Jitendra Ch. Baishya or Jitendra Chandra Sarkar both are of same Village Nichalamari, we are of the view that it is fit case to declare that the petitioner to be not a foreigner under the Foreigners Act of 1946. Accordingly, the petitioner shall be entitled for all such rights and liberties as may be entitled upon such declaration.

9. The petition stands allowed as indicated above. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant