

GAHC010168352019



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

Case No. : WP(C)/5168/2019

MANTU MONDAL
S/O. SRI MEGHNATH MONDAL, R/O. NO. 1 BHURBANDHA, P.S. RUPAHIHAT,
DIST. NAGAON, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMM AND SECY. TO THE HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE DY. COMMISSIONER

NAGAON
P.O. AND DIST. NAGAON
ASSAM
PIN-782001.

4:THE SUPDT. OF POLICE (B)

NAGAON
P.O. AND DIST. NAGAON
ASSAM
PIN-782001.

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-01.

6:THE STATE COORDINATOR NRC

ASSAM BHANGAGARH
GUWAHATI-05

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

04.05.2023

(AM Bujor Barua, J)

Heard Mr. AR Sikdar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Mr. G Sharma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Nagaon and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Nagaon.

2. The petitioner, Mantu Mondal, was referred to the Foreigners Tribunal 3rd Nagaon, for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T. Case No.643/15 corresponding to IM(D)T Case No.549/02 wherein an opinion

dated 14.12.2018 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. The petitioner relies upon the voters list of 1965 of village Kanchanpur in the Nagaon district which contains the name of Meghnath, son of Radhakanta at Sl.No.726. The petitioner claims that Meghnath of the 1965 voters list is his father.

5. The petitioner's name finds place in the voters list of 1997 of village Bhurbandha (2nd Part) as son of Meghnath Mondal at Sl.No.400. Meghnath Mondal has rendered evidence as OPW-2 stating that he is the father of Mantu Mandal and that he himself was born and brought up at village Kanchanpur. OPW-2 Meghnath Mondal states that he had shifted from village Kanchanpur to village Bhurbandha about 50/55 years back, but he still continues to cast his vote at village Kanchanpur, although he described himself to be of village Bhurbandha.

6. The Gaonburah of Bhurbandha had deposed as OPW-3 and during deposition he had stated that Mantu Mondal was born and brought up at village Bhurbandha and he still resides at village Bhurbandha and that Meghnath is his father and Late Radhanath is the grandfather of Montu Mondal and both the father and the grandfather are residents of village Kanchanpur which is at a distance of about 8 K.M. from village Bhurbandha.

7. OPW-3, Gaonburah states that the father of Mantu Mondal is staying at both the villages i.e. Kanchanpur and Bhurbandha. The petitioner also relies upon a school certificate of Laokhowa High School, Nagaon which contains the information that Mantu Mondal is the son of Meghnath Mandal of village Bhurbandha. But the Headmaster of the school concerned had not been examined.

8. In the circumstance, the matter stands remanded back to the Tribunal to firstly examine the Headmaster of Laokhowa High School so as to authenticate the information contained in the school certificate from the original school admission register. But as regards the issue that Mantu Mondal is a resident of Bhurbandha and his name appears in the voters list of 1997 in respect of village Bhurbandha, whereas Meghnath Mandal who is claimed to be his father is a resident of village Kanchanpur as per the voters list of 1965, the OPW-2 Meghnath Mandal himself had stated that he had shifted from village Kanchanpur to village Bhurbandha, but he still continues to cast his vote from 1965 till date at village Kanchanpur, meaning thereby, that the name of Meghnath Mandal continues to appear in the voters list of village Kanchanpur, the petitioner may produce the continuous voters list of village Kanchanpur to show that the name of Meghnath Mandal has all along appeared in the voters list of village Kanchanpur.

9. The OPW-3, being the Gaonburah is a 79 years old person and he knows the petitioner since his birth has stated that the father of the petitioner Meghnath Mandal is staying both at village Kanchanpur as well as at village

Bhurbandha. The aforesaid statement contained in the evidences of OPW-2 and OPW-3 do explain the issue as to how the name of Meghnath Mandal and the name of his grandfather appear in the voters list of village Kanchanpur and as to how the name of the petitioner appears in the voters list of village Bhurbandha and also as to why the name of the father of the petitioner at times also referred as a resident of village Bhurbandha. It is also noticed that in the cross examination the aforesaid statement of OPW-2 and OPW-3 have not been rebutted by the respondents in any manner.

10. In view of the above, the matter stands remanded back to the Tribunal to examine the voters list of village Kanchanpur so as to arrive at a conclusion that Meghnath Mandal is a resident of village Kanchanpur. The respondents in the Home Department are also allowed to cross-examine the OPW-3 Gaonburah as regards his statement that Meghnath Mandal is a resident of both the villages i.e. Kanchanpur and Bhurbandha.

11. It is stated that OPW-2 Meghnath Mandal at the time of deposition was 93 years old and may not be in an appropriate physical state to again come to the Tribunal for cross-examination. If OPW-3 Meghnath Mandal is still alive and if the respondents intend to cross examine the said witness, the same may be done by the method of commission through the Home Department, Government of Assam at their expense at any place where the OPW-3 may at present reside.

12. Accordingly, the petitioner shall appear before the Tribunal on 16.06.2023.

13. The Tribunal upon doing the needful and after examining the evidences and materials shall pass a reasoned order. In the event, the reasoned order is in favour of the petitioner, the same shall prevail over the opinion dated 14.12.2018 of the Foreigners Tribunal 3rd Nagaon in F.T. Case No.643/15 corresponding to IM(D)T Case No.549/02 and if it is against the petitioner, consequential action under the law shall follow.

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

15. Writ petition stands disposed of in the above terms.

16. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant