

GAHC010208182019



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

Case No. : WP(C)/6305/2019

RAMJAN SK. @ RAMJAN ALI
S/O LT. FOYAZ BHARALI, R/O VILL. KUSHA PAKRI PART-II, P.O.
HASHDOBA, P.S.LAKHIPUR, DIST. GOALPARA, PIN-783129

VERSUS

THE UNION OF INDIA AND 9 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-1

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-6

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-5

6:THE SUPERINTENDENT OF POLICE (BORDER)
GOALPARA
P.O. GOALPARA

DIST. GOALPARA
ASSAM
PIN-783101

7:THE DEPUTY COMMISSIONER
GOALPARA
P.O. GOALPARA
DISIT. GOALPARA
ASSAM
PIN-783101

8:THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GUWAHATI
ASSAM
PIN-781005

9:THE ELECTORAL REGISTRATION OFFICER
39 JOLESWAR L.A.C. GOALPARA
P.O. GOALPARA
DIST. GOALPARA
ASSAM
PIN-783101

10:THE OFFICER IN CHARGE
LAKHIPUR POLICE STATION
DIST. GOALPARA
ASSAM
PIN-78310

Advocate for the Petitioner : MR. M U MONDAL

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

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

28.04.2023

Heard Mr. A. Islam, learned counsel appearing for the petitioner; Mr. K.K. Parasar, learned Central Government Counsel [CGC] for the respondent nos. 1 & 8; Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent nos. 3 & 9; Mr. M.

Chetia, learned Junior Government Advocate, Assam for the respondent nos. 4 – 7 & 10.

2. The grievance of the petitioner is the action of the authority in marking 'D' against the name of the petitioner in the voters' list of 2011, 2015, 2017 & 2019 at Village – Kusha Pakri Part-I, under 39 Joleswar Legislative Assembly Constituency.

3. It is the case of the petitioner that such marking was without any notice or intimation and without giving any opportunity of hearing before putting the word 'D' against the name of the petitioner. It is his contention that the name of the father of the petitioner had appeared in the Voters' Lists of 1966, 1970 & 1989 and his name had appeared in the Electoral Rolls of 1989, 1997, 2005, 2008 & 2010. He had regularly cast his vote in all the elections during the period from 1989 to 2010. He has further claimed that he is presently residing at Village – Kusha Pakri Part-I, under 39 Joleswar Legislative Assembly Constituency.

4. On the other hand, learned counsel for the respondents have submitted that a procedure has been laid down to adjudicate the matter where the persons are aggrieved by marking 'D' against their names in the voters' list and the present case can also be dealt with by the same procedure.

5. Mr. Ali, the learned Standing Counsel, ECI has placed before this Court an order dated 18.01.2022 passed by this Court in W.P.[C] no. 267/2022 by which a case of similar nature has been disposed of. By the said order, this Court has observed that the issue involved would require factual determination and the appropriate forum would be the concerned Foreigners Tribunal, as a Writ Court in exercise of its powers under Article 226 of the Constitution of India may not have adequate means and expertise to decide the questions of fact which are disputed. It has further been directed that the Superintendent of Police of the concerned district would verify the case of the petitioner and thereafter, refer the matter to the concerned Foreigners Tribunal which will deal with the matter in accordance with law.

6. Following the aforesaid order, the present case is also disposed of by directing the Superintendent of Police, Border, Goalpara [respondent no. 6] to examine and verify the case

of the petitioner and if on such verification, it is found that the case of the petitioner is yet to be referred to the concerned Foreigners Tribunal, to immediately refer the case to the concerned Tribunal which, in turn, would examine the claim of the petitioner.

7. In view of the prayer made for removal of marking 'D' in the voters' list from the concerned No. 39 Joleswar LAC, Reference, if not made till now, be made within a period of 2 [two] months from the date of receipt of a certified copy of this order. Upon such reference being made, the petitioner may participate in such proceedings and establish his claim before the Tribunal.

JUDGE

Comparing Assistant