

GAHC010257412023



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

Case No. : WP(C)/7087/2023

MATILAL RABIDAS @ MOTILAL ROBIDAS
S/O- LATE LAKSHAN ROBIDAS @ LAKHAN RAM RABIDAS, R/O- VILL-
SABAJI BAGUAN (BARUAH PARA), P.O. BAGUAN, P.S. BAGUAN, DISTRICT-
GOALPARA, ASSAM, PIN- 783129

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS, GOVT. OF INDIA, SHASTRI BHAWAN, TILOK MARG, NEW DELHI-
01

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE HOME
DEPARTMENT
DISPUR
GUWAHATI-06

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

4:THE CHIEF ELECTION OFFICER
ASSAM
HOUSEFED COMPLEX
BELTOLA ROAD
GUWAHATI-06

5:THE DEPUTY COMMISSIONER
GOALPARA
P.O. AND DISTRICT- GOALPARA
ASSAM
PIN- 783101

6:THE ELECTION OFFICER
GOALPARA
P.O. AND DISTRICT- GOALPARA
ASSAM
PIN- 783101

7:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
P.O. AND DISTRICT- GOALPARA
ASSAM
PIN- 783101

8:THE ELECTORAL REGISTRATION OFFICER
38 GOALPARA WEST LEGISLATIVE ASSEMBLY
O/O- THE CIRCLE OFFICER
GOALPARA REVENUE CIRCLE
P.O. AND DISTRICT- GOALPARA
ASSAM
PIN- 78310

Advocate for the Petitioner : MR. M H TALUKDAR

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

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

11.12.2023

Heard Shri M.H. Talukdar, learned counsel for the petitioner. Also heard Shri A.I. Ali, learned Standing Counsel, ECI for the respondent nos. 3, 4, 6 & 8 and Shri M. Chetia, learned State Counsel appearing for the respondent no. 5.

2. The grievance of the petitioner is the action of the authorities in marking 'D' against the name of the petitioner in the voter list of Village-Sabaji Baguan under the Goalpara West LAC. It is the case of the petitioner that such marking was without any notice or intimation or even verification of any documents. It is the case of the

petitioner that he is a permanent resident of the village Sabaji Baguan, PS-Baguan. He has further claimed that he is presently residing at Village Sabaji Baguan under Goalpara West LAC in the district of Goalpara. It is the case of the petitioner that due to the action of marking 'D' against his name, he has been left out from the draft NRC. The learned counsel for the petitioner accordingly prays for a direction for consideration of his case and direct the appropriate authority for removal of the 'D' from his name.

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

4. Shri AI Ali, the learned Standing Counsel, ECI has placed before this Court an order dated 05.06.2023 passed by this Court in WP(C)/3188/2023 by which a case of similar nature has been disposed of. By the said order, this Court had 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 was further 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.

5. Following the aforesaid order, the present case is also disposed of by directing Superintendent of Police, Border-respondent no. 7 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.

6. In view of the prayer made for removal of marking 'D' in the voter list from the concerned No. 38 Goalpara West LAC/voter list of 2005, 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.

7. The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant