

GAHC010262122018



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

Case No. : WP(C)/8187/2018

MONO MOHAN DAS @ MANABAHAR BARMAN @ MANMOHAN BARMAN
S/O LATE SACHINDRA MOHAN BARMAN
VILL- BALABHITA
P.S. BARPETA ROAD,
DIST. BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY OF THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN,
TILAK MARG,
NEW DELHI-01.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME DEPARTMENT

DISPUR
GUWAHATI - 781006.

3:THE DEPUTY COMMISSIONER

BARPETA
P.O. BARPETA

DIST. BARPETA
ASSAM
PIN - 781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. BARPETA

DIST. BARPETA
ASSAM
PIN - 781301.

5:THE ELECTION COMMISSION OF INDIA

THROUGH ITS SECRETARY NIRBACHAN BHAVAN
NEW DELHI-01.

6:THE STATE CO-ORDINATOR

NATIONAL REGISTRAR OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHATI -05.

7:THE DISTRICT ELECTION OFFICER

BARPETA
P.O. BARPETA

DIST. BARPETA
ASSAM
PIN - 78130

Advocate for the Petitioner : MR K BHUYAN

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

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

ORDER

18.05.2023

(AM Bujor Barua, J)

Heard Mr. K Bhuyan, learned counsel for the petitioner. Also heard Ms. L

Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, as well as the Superintendent of Police (B) Barpeta and Mr. PK Medhi, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner, namely, Mono Mohan Das @ Manabahar Barman @ Manmohan Barman was referred to the Foreigners Tribunal No.8 Barpeta 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.21/2018 wherein an opinion dated 27.08.2018 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. It is noticed that there exists an enquiry report of the enquiry officer against Mono Mohan Das then aged about 40 years and the name of his father is shown to be Lt. Sachindro Barman and the other family members are stated to be Dulati Barman, Sunder Kumar Barman, Prem Kumar Barman, Raj Kumar Barman, Amitav Barman, Mithun Barman and Bidha Bala Barman. The notice was served by the Tribunal accordingly on Mono Mohan Das stating him to be son of Lt Sachindro Barman of village Balavita. Although the notice was addressed to Mono Mohan Das, it was received by Bandana Barman, wife of Mithun Barman. Be that as it may, pursuant to such notice, Manbahar Barman

@Manmohan Barman appeared before the Tribunal and discharged the burden under Section 9 of the Foreigners Act, 1946 to show that he is not a person who had entered the State of Assam on or after 25.03.1971.

5. To discharge the burden, Manbahar Barman @Manmohan Barman produced the voters list of 1965 of village Bala Bhitha in the Barpeta district which contains the name of Sashindra Mohan Barman, son of Fatik at Sl.No.12 and that Banchi Bala Barman wife of Sashindra at Sl.No.13 where both are shown to be residing in the same House No.7. The petitioner also relies upon the voters list of 1997 of village Balavita which contains the name of Manbahar Barman, son of Shachindra at Sl.No.48 and that of Banchibala Barman wife of Shachitra at Sl.No.50, where both are shown to be residing in the House No.12. On the basis of the said two documents, it can safely be said that Manbahar Barman son of Shashindra of village Bala Bhitha had discharged the burden that he is a citizen of India. But as because the notice of the Tribunal as well as the report of the enquiring authority reflects the name of Mono Mohan Das, son of Lt. Sachindro Barman, therefore, the person who appeared before the Tribunal i.e. Manbahar Barman was also declared to be a foreign national. We are unable to accept the said view of the learned Tribunal, inasmuch as, Manbahar Barman son of Shashindra of village Bala Bhitha had already discharged the burden that he is a citizen of India. Accordingly, we provide that Manbahar Barman son of Shashindra of village Bala Bhitha shall not be treated to be a foreigner in any manner and nor the authorities will disturb him in any manner by considering him to be a foreigner. But on the other hand, if the authorities in the Home Department, Government of Assam are of the view that Mono Mohan Das son of Lt. Sachindro Barman of village Balavita, if any person do exists, is required to

be proceeded against, the Home Department as well as the Tribunal would be at liberty to issue notice to such person alone and not to Manbahar Barman son of Shashindra of village Bala Bhita or any of his family members and thereafter proceed against Mono Mohan Das. Consequently, the order of the Tribunal is accordingly to be understood that it would be not applicable against Manbahar Barman@ Manmohan Barman son of Shashindra of village Bala Bhita.

6. Writ petition stands disposed of in the above terms.
7. Send back the LCR.
8. A copy of this order be furnished to Ms. A Verma, learned counsel for the Home Department Government of Assam for doing the needful.

JUDGE

JUDGE

Comparing Assistant