

GAHC010262702017



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

Case No. : WP(C)/838/2017

FAKARUDDIN
S/O LT. HAZRAT ALI R/O VILL- NO. 2 BORKUR P.S. BHURAGAON DIST.
MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI -6
ASSAM.

3:THE FOREIGNERS TRIBUNAL

5TH
MORIGAON
ASSAM
MORIGAON
PIN - 782105.

4:THE DEPUTY COMMISSIONER
MORIGAON
PIN - 782105.

5:THE SUPERINTENDENT OF POLICE BORDER
MORIGAON
PIN - 782105

6:THE ELECTION OFFICER

MORIGAON
ASSAM
MORIGAON
PIN - 78210

Advocate for the Petitioner : MR.A BORA

Advocate for the Respondent :

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

ORDER

Date : 11.04.2023

(A.M. Bujor Barua, J)

Heard Mr. S. Bora, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1, being the Union of India. Also heard Mr. G. Sarma, learned counsel for the respondents No. 2, 3 and 5, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondents No. 4, being the Deputy Commissioner, Morigaon and Mr. A.I. Ali, learned counsel for the respondent No. 6, being the authority in the Election Commission of India.

2. The petitioner Fakaruddin was referred to the Foreigners' Tribunal No. 2, Morigaon 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 and accordingly F.T. Case No. 84/2012 was registered. The Tribunal rendered its opinion dated 19.11.2015 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971. Being aggrieved this writ petition is instituted.

3. In the writ proceeding, the petitioner relies upon the voters' list of 1966 of village 2 No. Barkur Pathar, PS Laharighat in the Nagaon district which contains the name of Harjut Ali son of Wahedali at Sl. No. 121. The petitioner also relies upon a school transfer certificate issued by the Headmaster of 2 No. Barkur Pathar Primary School which contains the information that Md. Fakar Uddin is the son of late Hajarat Ali of village 2 No. Barkur Pathar.

4. If the information contained is correct, the petitioner may have established that he is a citizen of India through the link of his father Harjut Ali of village 2 No. Barkur Pathar whose name appears in the voters' list of 1966. However, we have noticed that the Headmaster of 2 No. Barkur Pathar Primary School had not been examined. The law in respect of the evidentiary value of a school certificate has been settled in the judgment and order dated 03.01.2019 in WP(C) No. 3056/2018 where there is a requirement under the law for the Headmaster of the school to depose before the Court along with the original school records including the admission register to fortify the information that may be contained in the school certificate.

5. In view of the above, we remand the matter back to the Foreigners' Tribunal No. 2, Morigaon to enable the Tribunal to examine the Headmaster of 2 No. Barkur Pathar Primary School along with school records in original including the school admission register which may contain the information that Md. Fakar Uddin is the son of Hajarat Ali of village 2 No. Barkur Pathar. Depending upon the evidence that may be rendered, the Tribunal to pass a reasoned order. The respondents in the Home Department of the Government of Assam may cross-examine the Headmaster. The respondents in the Home Department may also verify as to whether Fakaruddin the proceedee and Md. Fakar Uddin of the school transfer certificate are one and the same person. If the reasoned order

to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion dated 19.11.2015 in F.T. Case No. 84/2012 and if it is against the petitioner, consequences under law shall follow. The petitioner to appear before the Tribunal on 29.05.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant