

GAHC010002482024



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

Case No. : WP(C)/118/2024

ABDUR REZZAQUE
SON OF LATE ABDUL HAMID @ ABDUL HAMID MIAH @ ABDUL HAMID
ALI, RESIDENT OF VILLAGE- KHUDRA POITARI, P.S. LAKHIPUR,
DISTRICT- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
TO BE REPRESENTED BY SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI- 110001

2:THE ELECTION COMMISSIONER OF INDIA
GOVT. OF INDIA
NEW DELHI- 110001

3:THE STATE OF ASSAM
TO BE REPRESENTED BY SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

4:THE CHIEF ELECTION OFFICER
ASSAM
HOUSEFED COMPLEX
BELTOLA ROAD
GUWAHATI- 781006

5:THE ELECTORAL REGISTRATION OFFICER
GOALPARA SUBDIVISION
DISTRICT- GOALPARA
ASSAM
PIN- 783120

6:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM
PIN- 783121

7:THE SUPERINTENDENT OF POLICE (B)
GOALPARA
ASSAM
PIN- 783121

8:THE ASSAM STATE CO-ORDINATOR OF NRC
BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR. B U LASKAR

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

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

ORDER

12.01.2024

Heard Shri B.U. Laskar, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC for the respondent no. 1 whereas Shri AI Ali, learned Standing Counsel, ECI for the respondent nos. 2, 4, 5, Shri J. Payeng, learned counsel for the respondent nos. 3 & 7 and Shri K. Gogoi, learned State Counsel is present for the respondent no. 6.

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 Khudra Poitari under the No. 38 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 Khudra Poitari, PS Lakhipur. He has further claimed that he is presently residing at village Khudra Poitari under 38 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 against which he has filed a representation which has not been paid any heed to. 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. Shr AI Ali, the learned Standing Counsel, ECI has placed before this Court an order dated 18.01.2022 passed by this Court in WP(C)/267/2022 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 question 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, 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