

GAHC010016312024



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

Case No. : WP(C)/460/2024

AFSAR ALI
S/O LATE MARFAT ALI @ MARFOT ALI SHEIKH, R/O VILL-MORICHBARI
RESERVE, P.O.-DHUMERGHAT, P.S.-LAKHIPUR, DIST-GOALPARA, ASSAM,
PIN-783330

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 DIST-GOALPARA
ASSAM
PIN-783101

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

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

8:THE ELECTORAL REGISTRATION OFFICER
39 JALESWAR LEGISLATIVE ASSEMBLY
O/O THE BLOCK DEVELOPMENT OFFICER
LAKHIPUR DEVELOPMENT BLOCK
P.O.-LAKHIPUR
DIST- GOALPARA
ASSAM
PIN-78312

Advocate for the Petitioner : MR. M H TALUKDAR

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

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

02.02.2024

1. Mr. M.H. Talukdar, learned counsel for the petitioner, submits that there is a mark 'D' against the petitioner's name in the Voter List of 1997 onwards, even though the said mark 'D' was not present in the earlier Voter Lists prior to 1997. He submits that no opportunity of hearing was provided to the petitioner, prior to putting the mark 'D' against his name in the Voter List. The petitioner's counsel submits that in a similar matter, i.e., WP(C) 7087/2023, which was disposed of vide order dated 11.12.2023, this Court had directed the

Superintendent of Police (Border) to examine and verify the case of the petitioner therein and upon such verification, if it was found that the case of the petitioner was yet to be referred to the concerned Foreigners Tribunal, the same was to be referred.

2. The petitioner's counsel submits that in the present case, the Superintendent of Police (Border) has already made an enquiry report dated 19.08.2019 and stated that as per records available in the office of the Superintendent of Police (Border), 'D' Voter case is not found against the petitioner. He accordingly, submits that the Superintendent of Police (Border) should be directed to refer the petitioner's case to the concerned Foreigners Tribunal, to decide the issue, as to whether the mark 'D' against the name of the petitioner should be removed.

3. Mr. A.I. Ali, learned counsel appearing for the respondent Nos. 3, 4, 6 & 8; Mr. J. Payeng, learned counsel for the respondent Nos. 2 & 7 and Mr. G. Bokaliyal, learned counsel for the respondent No. 5 submit that they do not have any objection to the prayer made by the petitioner's counsel.

4. In a similar case pertaining to the inclusion of the name of a person in the Electoral Roll in the category of 'D' Voters since the year 1997, this Court vide order dated 11.12.2023 passed in WP(C) 7087/2023, had directed the Superintendent of Police (Border), to examine and verify the case of the petitioner therein and after such verification, if it was found that the case of the petitioner was yet to be referred to the concerned Foreigners Tribunal, the same was to be referred to the concerned Foreigners Tribunal to examine the claim of the petitioner.

5. In the present case, the Superintendent of Police (Border) has allegedly written the letter bearing Memo No.GLP/B/F.T/2019/1939 dated 19.08.2019 to the Election Officer, Goalpara stating as follows-

“To,

The Election Officer.

Goalpara.

*Sub: Enquiry report regarding pending F.T. Case
against Afsar Ali.*

*Ref. Memo No. Gel.66/“D” Voter Suspected Cases/
2019/429 Dtd. 31-07.2019.*

Sir,

With reference to the subject cited above, I like to inform you that as per records available at this office any F.T./“D” voter case is not found against Afsar Ali S/O Marfat Ali of village Morichbari Reserve PS Lakhipur Dist. Goalpara so far in this District in his given address.

Submitted for favour of your information and necessary action.

Yours faithfully

Superintendent of Police (B)

Goalpara::: Assam”

6. In view of the above, the Superintendent of Police (Border) is directed to refer the case of the petitioner to the concerned Foreigners Tribunal to examine the claim of the petitioner and after verifying the veracity of the letter dated 19.08.2019, issued by the Superintendent of Police (Border). Upon such reference being made before the concerned Foreigners Tribunal, the petitioner may participate in such proceedings and establish his claim before the concerned Foreigners Tribunal. The reference, if not made till now, shall be made by the Superintendent of Police (Border), within a period of 2(two)

months from the date of receipt of a copy of this order.

7. The writ petition is accordingly disposed off.

JUDGE

Comparing Assistant