

GAHC010106082024



2024:GAU-AS:12071

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

Case No. : I.A.(Civil)/1606/2024

BADSHA MONDAL,
S/O- LATE CHANDULLA MONDAL, VILL- MADHUFAL, P.S- MERERCHAR,
DIST- BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 110001

Advocate for the Petitioner : MR. P RAHMAN,

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

Linked Case : WP(C)/7719/2019

BADSHA MONDAL
S/O- LATE CHANDULLA MONDAL
VILL- MADHUFAL
P.S- MERERCHAR
DIST- BONGAIGAON
ASSAM

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA
MIN OF HOME AFFAIRS
NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI

4:THE STATE COORDINATOR
NRC
ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI- 781005

5:THE STANDING COUNSEL
SPECIAL FT AND BORDER

6:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSAM
PIN- 783383

7:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
ASSAM- 783383

8:THE O/C MERERCHAR POLICE STATION
BONGAIGAON- 783384

Advocate for : MR. P RAHMAN

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

02.12.2024

(K.R. Surana, J)

Heard Mr. P. Rahman, learned counsel for the applicant. Also heard Mr. J. Payeng, learned Standing Counsel, Foreigners Tribunal, for the respondent Nos. 2, 4, 5, 7 and 8; Mr. A. I. Ali, learned Standing Counsel, Election Commission of India, for the respondent No. 3 and Mr. P. Sarmah, learned Additional Government advocate appearing for the respondent No.6.

2. The applicant is a proceedee before the Foreigner's Tribunal, Bongaigaon No.2 at Abhayapuri in F.T. Case No. BNGN/ FT-2/ APR/119/17 [arising out of Reference No- BNGN P.E No. 03/2011]. An opinion was rendered by the said learned Tribunal on 29.05.2019 in the aforesaid case, thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream.

3. The said opinion was assailed by the petitioner before this Court by filing WP(C) 7719/19 and the Division Bench of this Court, by an order dated 04.04.2023, remanded the matter back to the said learned Tribunal for a fresh adjudication. It was further provided that before the Tribunal, the applicant would produce the complete voters list of 1966, 1970 and up to the year 1989 of the Village Madhufal, and upon such production, the Home Department was granted the liberty to verify the authenticity and correctness of the voters list and to determine whether the applicant, namely Badsha Mondal of the voters list of 1989 of Madhufal, and the proceedee is one and the same person. The

petitioner was directed to appear before the Tribunal on 12.05.2023, and the matter was disposed of accordingly.

4. By filing this interlocutory application, the applicant is seeking modification of the order dated 04.04.2023, by projecting that on 16.10.2023 and on 24.01.2024, two separate applications were filed before the Election Officer, North Salmara, Abhayapuri, seeking certified copy of voters list of the 1966, 1970 and 1985. It is projected that the certified copy of those voters list were not provided.

5. *Prima facie*, the Court is not satisfied with the nature of application filed on 16.10.2023 and 24.01.2024, seeking certified copies of the voters list of 1966, 1970 and 1985, which is not found to be in accordance with the liberty given by this Court vide order dated 04.04.2023, passed in W.P.(C) 7719/2019, where directions was issued for producing voters list of 1966, 1970 and up to 1989. Moreover, we also take note of the fact in the writ petition, the photo copy of the certified copy of the voters list reflects the number and name of the Village, the name of the Police Station, and the number and name of the constituency. But those particulars are lacking in the applications referred above. Moreover, there is no proof attached thereto, showing that such an application was submitted, as there is no acknowledgment of receipt from the office where the application was submitted.

6. It is a trite law that as the burden of proof under the Foreigners Act 1946, lies on the proceedee. Accordingly, it has been interpreted that it would be the proceedee who is required to take steps for the production of witness or documents. In the event that documents are not produced or witnesses do not attend, steps should be taken before the Foreigners Tribunal to invoke its power under paragraph-4 of the Foreigners (Tribunal) Order, 1964.

7. Therefore, it would be incumbent on part of the applicant to satisfy the Tribunal that steps in accordance with law was taken in terms of the directions contained in the order dated 04.04.2023 passed by this Court in WP(C) No. 7719/19. In the event that the applicant is able to satisfy the learned Tribunal that he has taken steps in terms of the directions of this Court, it would be permissible for the petitioner to move the learned Member, Foreigner's Tribunal, Bongaigaon, No.2, Abhyapuri, to pass an appropriate order under paragraph-4 of the Foreigners (Tribunals) Order, 1964 for production of the above referred voter list.

8. Accordingly, in view of the discussion above, the Court does not find any reason to modify the order of the Court dated 04.04.2023, passed in W.P. (C) No. 7719/2019.

9. Accordingly, with the observations made hereinbefore, the application stands closed.

JUDGE

JUDGE

Comparing Assistant