

GAHC010038282019



2026:GAU-AS:395

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

Case No. : WP(C)/1436/2019

TARUN MANDAL
SON OF JOYDEV MANDAL, RESIDENT OF VILLAGE SANTIPUR, WARD NO.
3, P.O. AND P.S. DHEMAJI, DISTRICT- DHEMAJI (ASSAM) PIN- 787057

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 110001.

2:THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

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

4:THE DEPUTY COMMISSIONER
DHEMAJI
DIST.- DHEMAJI
ASSAM
DHEMAJI- 787057.

5:THE SUPERINTENDENT OF POLICE (BORDER)
DHEMAJI
DIST. DHEMAJI
ASSAM
DHEMAJI- 787057.

6:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
1ST FLOOR
ACHYUT PLAZA
BHANGAGARH
GUWAHATI- 781005

Advocate for the Petitioner : MR. S S S RAHMAN, MR. S B RAHMAN,MR. M R SODIAL

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,MR J PAYENG,SC, NRC,MS. A VERMA,SC, ECI,MR. D BARUAH

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

J U D G M E N T
(O R A L)

06.01.2026

(K.R. Surana, J)

Heard Mr. S.S.S. Rahman, learned counsel for the petitioner. Also heard Mr. J. Sarma, learned CGC; Mr. M. Kalita, learned counsel appearing on behalf of Mr. A.I. Ali learned standing counsel for the ECI; Mr. J. Payeng, learned standing counsel for the FT matters and NRC; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate for respondent.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner namely, Tarun Mandal, has assailed the impugned opinion dated 29.11.2018, passed by the learned Member, Foreigners Tribunal, 1st

Dhemaji, in F.T. Case No. 01/18, arising out of Ref. No. Dhemaji P/S Case No. 12/17, dated 23-12-17, by which the petitioner was declared to be a foreigner who had entered India (Assam) on/ after 25.03.1971 stream and liable to be sent back to the specified territory.

3. Upon receipt of notice of the proceedings, the petitioner had entered appearance and he had filed his written statement projecting that his grandfather, Late Ganesh Ch. Mandal and his father, Shri Jaydev Mandal, were citizens of India and that the Sub-Divisional Officer (Civil), Barpeta, had issued a certificate of registration bearing No. 898-65, in favour of his grandfather in the year 1965. The petitioner has projected that he was born in village-Dighali Gaon (Shantipur), P.O- Jamuguri, P.S-Dhemaji, in the district of Dhemaji on 18.09.1998, for which he relies on his birth certificate and he has further stated that on reaching adulthood he obtained an Elector Photo Identity Card (EPIC for short). In support of his defence, the petitioner had examined himself as DW-1 and he has also examined one Ahmed Ali, the then Head Master of Rabindranath Bidya Bhawan, Thelamara, as DW-2. It also appears that the learned Tribunal had called for a report from the Office of the Superintendent of State Co-ordinator of National Registration (NRC), Assam regarding image ID No. 02111429, as well as from the registering authority, Deputy Commissioner, Barpeta, regarding the certificate of registration bearing the name of Ganesh Ch. Mandal. In respect of the NRC image, a written report was received by the learned Tribunal from the Additional Deputy Commissioner and ADRCR, NRC, Barpeta, certifying about the genuineness of the image ID No. 02111429 of Shri Ganesh Ch. Mandal. It also appears that Deputy Commissioner, Barpeta (Election Branch), through the Election Officer, Barpeta, issued a report dated 08.10.2018, informing that the certified copies of the electoral rolls of 1965 and

1970 under Sorbhog LAC, received from the learned Foreigners Tribunal had been verified and appeared to be matching as per the original records available in the Election Office, Barpeta. The Tribunal is in receipt of a WT message that the records of Registration Certificate are not available. The contents said WT message are as follows:

TKS OE NR == 1700 GR= 150

TO== THE LD. MEMBER FOREIGNER TRIBUNAL, DHEMAJI 1ST DHEMAJI

FROM== DEPCOM BARPETA

NO. BAMC.17/2017/116 DTD 21-08-2018

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KINDLY REFER TO THE REMINDER NOTICES IN RSPECT OF FT CASE NO. FT-01/2018 DTD 07-08-2018 AND FT CASE NO. 25/2017 DTD 07-08-2018 AAA THIS OFFICE DID NOT RECEIVE ANY NOTICE IN RESPECT OF BOTH THE CASES AAA THE CERTIFICATE OF REGISTRATION IN THE NAME OF GANESH CHANDRA MONDAL HAS BEEN VERIFIED WITH THE AVAILABLE RECORDS OF THIS OFFICE AAA HOWEVER COUNTERFOIL OF THE

CERTIFICATES COULD NOT BE TRACED OUT IN THE AVAILABLE RECORDS AAA AGAIN NO RECORD OF THE ABOVE SAID CERTIFICATE IS AVAILABLE IN THIS OFFICE AAA MSG

OVER AAA

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THI-1510/21

STD BY BMEDHI

RECD AT 1552/21 BY PB

4. The learned Tribunal, upon appreciation of the pleadings and evidence on record, discarded Ext.3, being the registration certificate on the ground that, as per the WT message no records had been found regarding the Registration Certificate of Ganesh Ch. Mandal. The legacy date image no. 02111429 [Ext.3(1)] was *discarded* in view of Section 15 of the Census Act, which excludes the admissibility of the NRC in evidence in proceedings under the Foreigners Act for which reference is made to the decision of this Court in the case of *Moslem Mondal & Ors., Vs. Union of India, 2010 (2) GLT 1*. In so far as the report from the Election Officer, Barpeta, which was received in respect of

the voter's list of 1965 and 1970, as the petitioner had not referred to the said voter's list nor produced the certified copy of those 2 (two) voter's list, the report of the Election Officer, Barpeta, was discarded as manipulated. Ext. 4, Ext.5 and Ext.6, which are the birth certificate, EPIC and land revenue receipt were discarded as the petitioner had failed to prove those documents through any official witness. Accordingly, by holding that the petitioner had failed to prove his linkage, the petitioner was held to be a foreigner of post 25.03.1971 stream.

5. While the learned counsel for the petitioner has made his submissions to assail the impugned opinion, the learned standing counsel for the FT matters has argued in favour of the impugned opinion and by referring to the Division Bench decision of this Court in the case of *Moslem Mondal (supra)*, has stated that this Court had already held that the record of the Census, being the NRC, is inadmissible in evidence. Accordingly, it is submitted that the petitioner has failed to link himself with his projected parents in the absence of any relevant pleadings and documents exhibited in support of his citizenship.

6. The petitioner, in support his defence has exhibited the following documents; viz., (i) School Certificate (Ext.1), (ii) Registration Certificate No. 898 of the year 1965, issued by the SDO, Barpeta (Ext.2), (iii) Legacy Data (NRC) of his Grandfather [(Ext.3(1)], (iv) Birth Certificate of the petitioner (Ext.4), (v) EPIC of the petitioner (Ext.5); and (vi) land revenue receipt (Ext.6).

7. In so far as the Registration Certificate (Ext.3) is concerned, it discloses that the same bears serial no. 25558, dated (illegible). However, below the seal and signature of the registering authority, the date of 23.09.1965 is written. By the said certificate, the registration authority has certified that the person whose particulars are given in the said certificate has been registered by

the said authority as citizen of India under the provision of Section 5 (1) (a) (d) of the Citizenship Act, 1955. In the considered opinion of the Court, the act of registration rests with the Central Government. Therefore, even, if the Sub-Divisional Officer, Barpeta, who was the then authorized Officer to register a person as Indian Citizen, the original record would be in the custody of some authority designated by Govt. of India. Therefore, the WT message referred above and stating the record could not be traced out would not mean that Ext.2 is a fake document. Moreover, notwithstanding that the petitioner has not pleaded about the voter's list of 1965 and 1970, as per page no. 69 of the Tribunal's records, there is a forwarding letter by the Election Officer, Barpeta, bearing No. BEL-27/2018/pt.I/184, dated 08.10.2018, regarding authentication of voter's list of 1965 and 1970, bearing reference to the Tribunal's letter bearing F.T. Case No. 01/18, dated 20.09.2018, received on 03.10.2018. As per the contents of the said letter, the learned Tribunal was informed that the certified copies of electoral roll of 1965 and 1970 under Sorbhog LAC, as received from the said Tribunal, were verified and appear to be matching as per the original records available at Election Office at Barpeta. Therefore, if the petitioner had not exhibited the said 2 (two) voter's lists, it was not required for the learned Tribunal to issue a notice to the Election Officer to give a verification report of the documents of the said 2 (two) voter's lists of 1965 and 1970.

8. Accordingly, the Court is of the considered opinion that the report has been called and as an opinion as to the genuineness has been received, which is at the instance of the learned Tribunal, the petitioner is found to be entitled to an opportunity to prove the said 2 (two) voter's lists of 1965 and 1970. Moreover, having received the report and having not raised any query with the Election Officer, Barpeta, as to the genuineness of the report, it was not open to

the learned Tribunal to discard the report of the Election Officer, Barpeta, to be a manipulated report. In the considered opinion of the Court, the report having been called for, either it has to be accepted or if any doubt was on the part of the Tribunal that the same is a manipulated document, the said authority ought to have been called for before the said report could be discarded in view of the presumption available under illustration (e) of Section 114 of the Evidence Act, 1872 corresponding to Section 119, illustration (e) of the Bharatiya Sakshya Adhiniyam, 2023.

9. In so far as the Ext.2 is concerned, which is the Registration Certificate, the learned Tribunal ought to have taken cognizance of the fact that as the issue of citizenship is not dealt with by the State and is within the domain of the Central Government under the Citizenship Act, the petitioner is required to be given an opportunity to get the relevant records from the concerned authority who may have custody of the said document.

10. In view of above, the Court is of the considered opinion that, in so far as the Ext.2 and voter's lists of 1965 and 1970 are concerned, the petitioner is required to be given an opportunity to prove the said documents in accordance with law.

11. To facilitate the same, the impugned opinion dated 29.11.2018, passed by the learned Member, Foreigners Tribunal, 1st Dhemaji, in F.T. Case No. 01/18, arising out of Ref. No. Dhemaji P/S Case No. 12/17, dated 23.12.2017, is hereby set aside.

12. The matter is remanded back to the learned Tribunal for a fresh opinion in accordance with law after giving a reasonable opportunity to the petitioner to prove the said 3 (three) documents.

13. The petitioner, who is represented by his learned counsel is directed to

appear before learned Foreigners Tribunal, 1st Dhemaji, in connection with F.T. Case No. 01/18, without fail on or before 12.02.2026 and by producing a certified copy of the order await for further directions of the said learned Tribunal.

14. On the date of his appearance, the petitioner shall take appropriate steps as he may be so advised in respect of the said 3 (three) documents.

15. It is clarified that if the petitioner fails to appear on the within the time allowed, it would be open to the learned Tribunal to treat the petitioner as absent on call and to pass appropriate orders as it may deem fit and proper.

16. The Registry shall send back the records of the Tribunal expeditiously along with a copy of the order to be made a part of record.

17. The writ petition stands partly allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant

PRATIK
GUPTA
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by PRATIK
GUPTA
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