

GAHC010205392019



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

Case No. : WP(C)/6428/2019

JAGAT CHETRI @ JAGAT BAHADUR CHETRI
S/O- LT BAUDDHAMAN CHHETRI, PERMANENT R/O- AMSING, JORABAT,
P.O. NOONMATI, GHY- 20, DIST- KAMRUP (M), ASSAM, PH. NO. 8876032202

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110011

2:THE STATE OF ASSAM
THROUGH THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER OF POLICE (B)
PANBAZAR
GHY-1
KAMRUP (M)
ASSAM

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ZOO ROAD
R.G.BARUAH ROAD
P.O. ZOO ROAD
GHY-24
P.S. GEETANAGAR
DIST- KAMRUP (M)
ASSAM

5:THE ELECTION COMMISSION OF INDIA

NIRBASAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

6:THE DY. COMMISSIONER
KAMRUP (M) DISTRICT
PANBAZAR
GHY-1
DIST- KAMRUP (M)
ASSA

Advocate for the Petitioner : MR. M K BORAH

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

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

Date : 20-02-2023

JUDGMENT & ORDER (ORAL)

(A.M. Bujur Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner, Mr. PK Medhi, learned CGC for the respondent No. 1, Mr. G Sarma, learned counsel for the respondents No. 2 and 3 being the authorities in the Home Department of the Government of Assam, Ms. L Devi, learned counsel for the respondent No. 4 being the authorities in the NRC, Mr. A I Ali, learned counsel for the respondent No. 5 being the Election Commission of India and Ms. U Das, learned counsel for the respondent No. 6 being the Deputy Commissioner, Kamrup (M).

2. The petitioner Jagat Bahadur Chetri had been referred by the Electoral Registration Officer (in short ERO) of 52 Dispur Legislative Assembly Constituency for an adjudication as to whether he is a citizen of India, in other words, whether he is a person who entered the State of Assam, subsequent to 25.03.1971 from the specified territory. The order of reference itself provides

that the ERO had got the matter verified by on the spot local verification on the question as to whether the petitioner Jagat Bahadur Chetri had entered the State of Assam subsequent to 25.03.1971.

3. The on the spot verification report was submitted by the local verification officer namely, Sri Prakash Borah, Assistant Geologist in the Directorate of Geology and Mining, Government of Assam. Clause-4 of the on the spot verification report provides that the date of birth of Jagat Bahadur Chetri is 1937 and the place of birth is Dibrugarh.

4. If Jagat Bahadur Chetri was born in the year 1937 and his place of birth is Dibrugarh and there is no material that subsequent to his birth, he migrated to the specified territory and thereafter re-entered the State of Assam subsequent to 25.03.1971, we are of the view that it was an absolute non-application of mind on the part of the ERO of 52 Dispur Legislative Assembly Constituency to have referred the petitioner to the Foreigners Tribunal for an opinion as to whether the petitioner Jagat Bahadur Chetri is a foreigner who entered the State of Assam subsequent to 25.03.1971 from the specified territory.

5. Further material also shows that Jagat Bahadur Chetri was serving in the Indian Army having been recruited in the year 1963 and he had retired from the service of Indian Army on 31.05.2001 having rendered about 38 years of service. It appears that the enquiring officer had not done its duty in the proper earnest and there can be no reason why the petitioner Jatat Bahadur Chetri would refuse to divulge the information that he was serving in Indian Army since 1963.

6. Considering the manner in which the reference had been made against the petitioner for an opinion as to whether the petitioner had entered the State of

Assam subsequent to 25.03.1971, more so, upon having the materials before it that the petitioner was born in the year 1937 in Dibrugarh, we are of the view that the reference itself is not maintainable in law.

7. Accordingly, the reference made against the petitioner Jagat Bahadur Chetri is set aside and as a consequence the opinion dated 10.01.2012 passed by the Foreigner's Tribunal, Kamrup (Metro) in F.T. Kamrup (Metro) D.V Case No. 199/2011 [IM(D)T Case No. 1088/2000] is also set aside. However, for causing inconvenience to the petitioner without any reasonable cause and without any application of mind, a cost of Rs. 10, 000/- (rupees ten thousand) is imposed on the ERO of 52 Dispur Legislative Assembly Constituency to be paid to the petitioner. The cost be paid by the Election Commissioner, Assam and the Election Commissioner may recover the cost imposed from the person concerned who was serving as the ERO of 52 Dispur Legislative Assembly Constituency at the relevant point of time when the reference was made.

8. Having so declared, it is also provided that the petitioner shall be entitled to all the rights and privileges as a citizen of India as may be admissible under the law.

The writ petition is allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant