

(2023) 02 GAU CK 0010

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3939 Of 2019

Kalam Mondal

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 03-02-2023

Acts Referred:

Citation : (2023) 02 GAU CK 0010

Hon'ble Judges : Achintya Malla Bujor Barua, J; Robin Phukan, J

Bench : Division Bench

Advocate : A Roshid

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. Roshid, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2 and 4 being the authorities in the Home Department, Ms. K. Phukan, learned counsel for the respondent No. 3, being the Deputy Commissioner, Barpeta and Mr. T. Pegu, learned counsel for the respondent No. 5, being the Election Commission of India.

2. The petitioner Kalam Mondal was referred to the Foreigners Tribunal No. 11, Barpeta, for an opinion as to whether he is a person who had entered the State of Assam subsequent to 25.03.1971 and consequently F.T. Case No. 1356/2017 was registered. Before the Tribunal, the petitioner exhibited the voters' list of 1966 of village Bardonga, Mouza Rupshi in the Barpeta district wherein at Sl. No. 56 the name of Sukur Ali Mandal, son of Ujal and at Sl. No. 58 the name of Basir Uddin Mandal, son of Sukur Ali appear. The petitioner also exhibited the voters' list of 1989 of village Bardonga, Mouza Rupshi in the Barpeta district wherein at Sl. No. 96 the name of Baser Mandal, son Sukur Mandal, at Sl. No. 97 the name of Tamiran Nessa, wife of Basir Mandal, at Sl. No. 98 the name of Kalam Mandal, son of Basir Mandal, at Sl. No. 99 the name of Amena Khatun, wife of Kalam Mandal, at Sl. No. 100 the name of Hazarat Ali, son of Basir Mandal and at Sl.

No. 93 the name of Semlai Khatun, wife of Basir Uddin Mandal appear.

3. The petitioner takes a stand that after 1985 his entire family shifted to the village Saruharid under P.S. Sorbhog also in the Barpeta district and accordingly exhibited the voters' list of 1997 of village Saruharid, wherein at Sl. No. 275 House No. 78 the name of Bosir Mondal, son of Sukur, at Sl. 276 House No. 78 the name of Semlai Nessa, wife of Bosir, at Sl. No. 277 House No. 78 the name of Amiran Nessa, wife of Bosir, at Sl. No. 278 House No. 78 the name of Kalam Mondal, son of Bosir, at Sl. No. 279 House No. 78 the name of Amena Khatun, wife of Kalam and at Sl. No. 280 House No. 78 the name of Hazarat Ali, son of Bosir appear.

4. If we look into the names of the voters' list of 1985 of village Bardonga and the voters' list of 1997 of village Saruharid, a lot of similarity in the names are discernible and it is also noticed that in the name of the persons in the voters' list of 1985 of village Bardonga and the name of the persons in the voters' list of 1997 of village Saruharid there appears a continuity in the serial numbers in the voters' list, meaning thereby it is an indication that they belong to the same family.

5. It is stated that for certain inadvertent reasons the voters' list of 1997 of village Saruharid could not be exhibited before the Tribunal. The petitioner Kalam Mondal was referred for an opinion before the Tribunal by showing him a resident of village Saruharid. From such point of view, the voters' list of 1997 of village Saruharid would have its own relevance to establish the citizenship of the petitioner.

6. In the circumstance, without interfering with the opinion dated 24.04.2019 in F.T. Case No. 1356/2017 of the Foreigners Tribunal No. 11, Barpeta, we remand the matter back to the Tribunal to enable the petitioner to exhibit the voters' list of 1997 of village Saruharid as the petitioner also makes a claim that his entire family had shifted from village Bardonga to village Saruharid. The petitioner may also produce the downline voters' list of 1985 of village Bardonga which may indicate the names of the petitioner and his family stood deleted as well as the upline voters' list of 1997 of village Saruharid which may indicate the names of the petitioner and his family did not appear prior to the shifting. If advised, the petitioner may also produce the administrative order that the authorities in the Election Commission of India may have passed while deleting the names of the petitioner and his family members from the village Bardonga and had entered their names in the voters' list of village Saruharid. Upon such materials being produced, the Tribunal may examine the same and pass a reasoned order thereon, as may be advised. The petitioner to appear before the Foreigners Tribunal No. 11, Barpeta on 03.03.2023. Till the Tribunal renders its opinion, no coercive measure be taken against the petitioner. The reasoned order that the Tribunal may pass should prevail over the order passed by the Tribunal dated 24.04.2019 in F.T. Case No. 1356/2017.

Writ petition is disposed of as indicated above.