
(2019) 02 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No. 5513 Of 2018

Niranjan Sarkar @ Niran And 4 Ors

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 08-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0021

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : GP Bhowmik, S. Sarkar, A Ali, J Payeng, A Verma, G Sarma

Judgement

AM Bujor Barua, J

1. Heard Mr. S. Sarkar, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. J Payeng, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas, Ms. A Verma, learned standing counsel for the authorities under the NRC as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police (B), Morigaon, IM(D)T Case No. 28/2012 was registered against the petitioners. We have taken note of that the reference was made only against the petitioner No.1/Niranjan Sarkar as per the reference made by the Superintendent of Police dated 20.08.2002 in the form one submitted by the Inquiry Officer. The information was provided that the petitioners Nos. 2 to 5 were indicated as his family members but nevertheless notice was issued against all the petitioners.

3. The IMDT Act, 1983 being set aside, the reference made against the petitioners was transferred to the Foreigners Tribunal No.1, Morigaon and was numbered as F.T. (C) Case No. 572/2010 before the Tribunal. A written statement was submitted taking into account that the father of the petitioner was Harendra Sarkar who has been living in village: Dakhin Dharamtul after coming from the

earstwhile East Pakistan in the year 1930. Thereafter, married to petitioner No.2/ Anu Sarkar and through the wedlock, the petitioner Nos. 3 to 5 were born. The petitioner relied upon the voter list of 1965 as well as the affidavit dated 04.08.1955 stating that his family comprises of, amongst others the petitioner Nos. 2 to 5 thereupon. The petitioner also relied upon the voter list of 2005 of Village: Dakhin Dharamtul, P.S. Mayang, Dist: Morigaon which contains his name at Serial No.490, showing him to be the son of Harendra Sarkar, aged about 45 years.

4. Similarly, the voter list of 2008 also shows the name of the petitioner to be the son of Harendra Sarkar. If we read the voter list of 1965 containing the name of Harendra Sarkar and the affidavit dated 04.08.1955, it is discernible that Niranjana Sarkar is the son of Harendra Sarkar whose name appeared in the voter list of 1965 of village: Dakhin Dharamtul.

5. We have perused the order of the Tribunal dated 06.04.2018 and taken note that the voter list of 1965 showing the name of Harendra Sarkar and the affidavit dated 04.08.1955 showing that Niranjana Sarkar was one of the sons of Harendra Sarkar, had neither been duly considered nor been discussed by the Tribunal. If the contents of the said two exhibits are acceptable, Niranjana Sarkar has definitely established a linkage with Harendra Sarkar of 1965 voter list, but again the question would remain as to whether the petitioner No.1/ Niranjana Sarkar and Niranjana Sarkar indicated in the affidavit dated 04.08.1955 are the one and the same person.

6. Mr. J. Payeng has indicated that if Niranjana Sarkar indicated in the affidavit dated 04.08.1955 was two years as on 1955 then his age in the year 2005 ought to have been 53 years but the Niranjana Sarkar shown in the voter list of 2005 of village: Dakhin Dharamtul and son of Harendra Sarkar is shown to be 45 years.

7. In view of the above, we are of the view that the aforesaid aspect of the matter requires a due consideration from the Tribunal and upon such consideration to pass a reasoned order. Accordingly, the order dated 06.04.2018 in F.T. (C) No. 572/2010 of the Foreigners Tribunal No.1, Morigaon is set aside and the matter be remanded back to the Tribunal for a consideration as indicated above.

8. The petitioner shall appear before the Tribunal on 06.03.2019 and upon his appearance a consideration and the reasoned order as indicated above be passed within a period of 15(fifteen) days thereafter.

9. It is provided that the Tribunal shall pass the aforesaid aspects within the materials available on records but however if the Tribunal is of the view that any further evidence is required, such evidence may be called for at its own discretion but not on the instance of the petitioner.

10. Send back the LCR immediatel.