
(2019) 03 GAU CK 0064
In the Gauhati High Court
Case No : Writ Petition (C) No. 7440 Of 2017

Nitya Das

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 19-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 GAU CK 0064

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

Bench : Division Bench

Advocate : D Ghosh, A Ali, U.K. Nair, G Sarma

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. U.K. Nair, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas 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), Kamrup, IMDT Case No.885/2003 was registered. Upon the IMDT Act, 1983 being declared ultra vires, the reference was transferred to the Foreigners Tribunal, Baksa and was re-numbered as F.T. Case No. 389/BAKSA/2016.

3. Before the Tribunal, the petitioner took a stand that he is the son of Naresh Chandra Das and Satya Bala Das and that the name of Naresh Chandra Das appeared in the voter list of 1970 of village-Betagaon. Before the Tribunal, the petitioner relied upon the voter list of 1970 of village- Betagaon, P.S. Tamulpur which contains the name of Naresh Chandra Das son of Nabadeep, aged about 30 years. The petitioner further relied upon the voter list of 1997 of village-Betagaon which contains the name of Nitya Das son of Naresh, aged about 35

years and it is stated that Nitya Das is the petitioner himself.

4. We had required the petitioner to produce the complete voter list of the years between 1970 & 1997 of village- Betagaon which may contain the names of Naresh Chandra Das and Nitya Das in the same voter list.

5. Accordingly, Ms. D. Ghosh, learned counsel for the petitioner has produced the complete voter list of the year 1989 of village- Betagaon in vernacular which contains the name of Naresh Das son of Mayna Charan Das, Satya Bala Das wife of Naresh, Niru Das son of Naresh Das, Nitya Das son of Naresh Das. The 1989 voter list otherwise forms a link of the petitioner with that of Naresh Chandra Das of 1970 voter list except for the expect that in the 1989 voter list, Naresh Das is shown to be the son of Mayna.

6. We have also taken note of the order dated 15.03.2017 of the Foreigners Tribunal, Baksa in F.T. Case No. 349/BAKSA/2016, wherein, Niru Das son of Naresh Das of village- Betagaon had been declared to be an Indian citizen. It is stated that Niru Das son of Naresh Das of village- Betagaon, who was the proceedee in F.T. Case No. 349/BAKSA/2016 is in fact the elder brother of the petitioner and, whose name also appeared in voter list of 1989 of village- Betagaon, as indicated above. If Niru Das son of Naresh Das of voter list of 1989 is an Indian citizen, the question would also arise as to why Nitya Das son of Naresh Das also of the voter list of 1989 would not be an Indian citizen. No material is available to arrive at any conclusion that Niru Das son of Naresh Das of F.T. Case No. 349/BAKSA/2016 of village- Betagaon and Nitya Das son of Naresh Das of F.T. Case No. 389/BAKSA/2016 of village- Betagaon are both not the sons of the same Naresh Das of village-Betagaon.

7. It is also taken note that both the opinion, one declaring Niru Das to be a citizen and the other declaring Nitya Das to be a foreigner were passed by the same Tribunal. Accordingly, we are of the view that the relevant material before the Tribunal were not taken into consideration, rendering it to be a fit case for an interference under the certiorary jurisdiction under Article 226.

8. Accordingly, the order dated 15.03.2017 in F.T. Case No. 389/BAKSA/2016 of the Foreigners Tribunal, Tamulpur is set aside.

9. The petitioner shall now appear before the Tribunal on 24.04.2019 and upon such appearance, the Tribunal shall examine the records of both F.T. Case No. 349/BAKSA/2016 and F.T. Case No. 389/BAKSA/2016 and from the materials available on record in both the references arrive at a conclusion as to whether Nitya Das is also the son of Naresh Das of village- Betagaon and whether Niru Das son of Naresh Das of F.T. Case No. 349/BAKSA/2016 is his elder brother. Upon such determination, a reasoned order be passed. Upon such appearance before the Tribunal, the petitioner shall bring the aforesaid materials that were exhibited in the case of Niru Das before the Tribunal for its consideration.

10. It is stated that the petitioner is presently in detention camp at Goalpara and

as we have interfered with the order dated 15.03.2017, we direct that the petitioner be released forthwith subject to submission of two surety bonds from two prominent persons from his village or a Government official to the satisfaction of the Superintendent of Police, (B), Goalpara, who shall verify and satisfy to itself as regards the authenticity of the two sureties to ensure his continuous presence before the authority as and when required.

11. In terms of the above, the writ petition stands allowed to the extent indicated above.