

GAHC010001162023



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

Case No. : WP(C)/130/2023

HARMUJ ALI
S/O- LT. MUSLEMUDDIN @ MUSLEM ALI,
VILLAGE- GARUBANDHA,
P.S.- MAYONG,
P.O.- SANDAHKHAITI,
DIST.- MORIGAON, ASSAM.
PIN- 782121.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF INDIA,
HOME DEPARTMENT,
NEW DELHI-1, INDIA.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

HOME DEPARTMENT

DISPUR
GUWAHATI-6.

3:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHANGAGARH

GUWAHATI-5

ASSAM.

4:THE ELECTION COMMISSION OF INDIA
TO BE REPRESENTED BY THE COMMISSIONER
NIRVACHAN SADAN

ASHOKA ROAD
DELHI. 110001.

5:THE DEPUTY COMMISSIONER
MORIGAON
DIST. MORIGAON
ASSAM.

6:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST.- MORIGAON
ASSAM

Advocate for the Petitioner : MR. Z HAMMAD

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

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 09-01-2023

[N. Kotiswar Singh, JJ]

Heard Mr. Z. Hammad, learned counsel for the petitioner. Ms. L. Devi, learned counsel appearing on behalf of Mr. RK Dev Choudhury, learned Deputy SGI, for respondent no.1; Mr. G. Sarma, learned Special Counsel, F.T. for respondent no.6; Mr. A.I. Ali, learned Standing Counsel, ECI, for respondent no.4, Ms. L. Devi, learned Standing Counsel, NRC for respondent no.3 and Ms. U. Das, learned State Counsel, Assam, appearing for respondent nos.2 & 5.

2. Considering the nature of the case, which is based on the applicability of the principle of *res judicata*, we are inclined to dispose of this petition at this stage without issuing any formal notice to the respondents.

3. The present petition has been filed by the petitioner, namely, Harmuj Ali, on being aggrieved by the impugned order dated 25.03.2022 passed by the Foreigners Tribunal No.4th, Morigaon, Assam in Case No.F.T.(C)136/16 arising out of IM(D)T Case No.287/03 declaring the petitioner and his family members foreigners of post 1971 stream.

4. Learned counsel for the petitioner has taken a preliminary plea in assailing that the opinion dated 25.03.2022 passed by the Foreigners Tribunal No.4th, Morigaon, Assam in Case No.F.T.(C)136/16 arising out of IM(D)T Case No.287/03 will not lie as the petitioner was already declared an Indian by the Foreigners Tribunal (1st), Morigaon in Case No.F.T.(D)-271/06 vide its opinion dated 21.11.2008 and thereafter, again in another proceeding i.e. in F.T.(C) Case No.136/2016 vide opinion dated 14.02.2017 the Foreigners Tribunal No.4th, Morigaon declared him and his family members as Indians.

5. It has been submitted that though the petitioner had relied upon the earlier two opinions i.e. Case No.F.T.(D)-271/06 and F.T.(C) Case No.136/2016 in his favour but the Tribunal did not consider the same on the ground that voters lists of 1965 & 1970 were not duly proved in respect of his father and also that the evidence had not been properly analyzed.

6. Learned counsel for the petitioner submits that as far as the applicability of *res judicata* in a proceeding before the Foreigners Tribunal is concerned, the same is settled that if a proceedee was already declared an Indian in a proceeding before the Foreigners Tribunal,

unless the same is interfered by the competent forum, the same will be binding on subsequent proceeding against the same person in terms of the decision of the Hon'ble Supreme Court passed in *Abdul Kuddus vs. Union of India (2019) 6 SCC 604* and the decision rendered by this Court in *WP(C) No.2099/2018 (Sital Mandal vs. Union of India and Ors.)* on 28.04.2022 and other analogous matters and as such, if any such application is made by the applicant in the subsequent proceeding, the Tribunal is duty bound to examine the same to ascertain as to whether the proceedee is the same person who was proceeded earlier before the Tribunal and a favourable opinion was passed by the Tribunal declaring him/her to be an Indian.

7. Now, the obvious question would be as to whether the petitioner who was declared a foreigner by the impugned order dated 25.03.2022 passed by the Foreigners Tribunal No.4th, Morigaon, Assam in Case No.F.T.(C)136/16 arising out of IM(D)T Case No.287/03 is the same person who was proceeded in Case No.F.T.(D)271/06 before the Foreigners Tribunal No.1st, Morigaon and F.T.(C) Case Nos. 136/2016 arising out of IM(D)T Case No.287/03 before the Foreigners Tribunal No.4th, Morigaon in which the petitioner was declared an Indian. If the present petitioner is the same person who was proceeded in Case No.F.T.(D)271/06 and F.T. (C) Case Nos. 136/2016, the subsequent proceeding would not lie and accordingly, the decision in the subsequent proceeding also cannot be sustained in law.

8. In order to appreciate the submission advanced by the learned counsel for the petitioner, we have examined all three impugned orders.

9. In the first opinion dated 21.11.2008 rendered by the Foreigners Tribunal (1st),

Morigaon in Case No.F.T.(D)-271/06 the proceedee was described as Md. Harmuj Ali, S/o Muslemuddin, resident of Village-Garubandha, P.S.-Mayong, dist.-Morigaon. In the said proceeding, the Tribunal declared the petitioner as a citizen of India. The petitioner along with his family members were proceeded again in F.T.(C) Case No.136/2016 before the Foreigners Tribunal No.4th, Morigaon where the petitioner and his family members were described as 1) Md. Harmuj Ali (O.P.1), 2) Mustt Jubeda Khatun (wife of O.P.1), 3) Md. Jakir Hussain (son of O.P.1 & 2), 4) Farida Khatun (daughter of O.P.1 & 2), 5) Ilija Begum (daughter of O.P. 1 & 2) residents of Village-Garubandha, P.S. Mayong, Dist.-Morigaon (Assam) and the Tribunal after considering the evidence on record vide its opinion dated 14.02.2017 declared the proceedes therein including the petitioner as Indian Citizens.

10. Subsequently, in the third proceeding i.e. in Case No.F.T.(C)136/16 arising out of IM(D)T Case No.287/03 before the Foreigners Tribunal No.4th, Morigaon, the petitioner and his family members were described as 1) Md. Harmuj Ali, S/o Lt. Muslem Ali, 2. Musstt. Jubeda Khatun (wife), 3. Md. Jakir Hussain (son) 4. Musstt. Farida Khatun (Daughter), 5. Musstt. Iliza Begum (Daughter), residents of Village-Garubandha, P.S. Mayong, Dist.-Morigaon (Assam) and the Foreigners Tribunal No.4th, Morigaon after considering all the evidences declared all the proceedees i.e. the petitioner along with his other family members as foreigners of post 1971 stream vide its opinion dated 25.03.2022.

11. From the perusal of the above three descriptions of the proceedees respectively, there are striking similarities in the descriptions. However, the tribunal rejected these opinions on following grounds:

“(a) Exhibit-A is judgment and order dated 21.11.2008 passed by Member, F.T.-1

Morigaon. O/p has solely relied upon the judgment dated 21.11.2008 passed by learned Member F.T. No.1 in F.T.(D) 271/2006 wherein he was declared as an Indian, but it to be noted that learned Member has passed the said order in a very cryptic manner as it reveals from para-3 of the said judgment wherein it is specifically mentioned that 1965 and 1970 voter list of Muslemuddin i.e. O/p's father was not proved by the o/p in due manner of law and therefore, accepting the voter list 1965 and 1970 of Muslemuddin as father of present o/p was not lawfully justifiable and hence the said judgment is not taken for consideration of the present case.

(b) Exhibit-B is judgment copy passed by predecessor member, F.T.4th, Morigaon against the present o/p in F.T.(C) 136/16 vide order dated 14.02.2017 decelaring the o/p as an Indian, taking into consideration all the ground that O/p Harmuz ali being already declared an Indian in the earlier proceeding without analyzing the evidence/documents for which reason Hon'ble Gauhati High Court in Suo-Moto case No.11/2018 has seized the case record of the present case for verification and has accordingly returned the case for re-open and hence the present proceeding."

12. Accordingly, in view of the principle of *res judicata*, the Tribunal could not have gone into the merit of the case again. The Tribunal could have only proceeded to find out as to whether the identities of the present proceedees are the same who were proceeded earlier.

13. Accordingly, since we have found similarities in the name and description of the proceedees as mentioned above, we are of the view that this aspect should be examined by the Tribunal, more so, when the earlier opinions rendered by the Foreigners Tribunal No.1, Morigaon in case No.F.T.(D)271/06 on 21.11.2008 and the Foreigners Tribunal No.4th, Morigaon in F.T.(C) No.136/16 on 14.02.2017 were brought to the notice of the Foreigners Tribunal No.4th, Morigaon but the Tribunal did not consider the said aspect in the second proceeding at all on the ground that the Tribunal differs from the earlier view, which cannot be done once *res judicata* applies. It has been clearly mentioned in *Abdul Kuddus (supra)* that if there had been an order by the Foreigners Tribunal in favour of a person determining the citizenship, the said decision will be binding on the subsequent proceedings against the same person and there cannot be another proceeding to re-determine the citizenship of the person, by applying the principle of *res judicata*.

14. Accordingly, this shall be the preliminary issue which is to be decided by the Foreigners Tribunal No.4th, Morigaon in F.T.(C) No.136/16 as to whether the present proceedee is the same person who was earlier declared an Indian Citizen by the Foreigners Tribunal No.1, Morigaon in case No.F.T.(D)271/06 vide its opinion dated 21.11.2008 and Foreigners Tribunal No.4th, Morigaon in F.T.(C) No.136/16 vide its opinion dated 14.02.2017 and if it is found that the petitioner is the same person, the present proceeding shall immediately be concluded in favour of the petitioner after considering the order dated 21.11.2008 passed in the Foreigners Tribunal No.1, Morigaon in case No.F.T.(D)271/06 and the order dated 14.02.2017 passed by the Foreigners Tribunal No.4th, Morigaon in F.T.(C) No.136/16 where the petitioner was declared an Indian citizen and in such an event, the impugned order dated 25.03.2022 passed in Case No.F.T.(C)136/16 by the Foreigners Tribunal No.4th, Morigaon, declaring the petitioner as a foreigner will be superseded by the subsequent orders passed in term of this order.

Only when the Tribunal comes to a finding that the present proceedee is not the same person who was proceeded and was found to be an Indian in case No.F.T.(D)271/06 and F.T. (C) No.136/16, the impugned order dated 25.03.2022 will stand and the order of the Tribunal can be challenged by the petitioner both on the issue of identity of the petitioner and other grounds raised in this petition.

15. In view of the above, without entering in the merits of the case, we remand the matter to the Foreigners Tribunal No.4th, Morigaon, to examine whether the petitioner is the same person who was proceeded in earlier in abovementioned two other proceedings.

We are also making it clear that we put on hold the order dated 25.03.2022 passed by

the Foreigners Tribunal No.4th, Morigaon in .T.(C) No.136/16 and the opinion dated 25.03.2022 shall not to be given effect to till the concerned Foreigners Tribunal comes to the conclusion as to whether the present petitioner is the same person who was proceeded in case No.F.T.(D)271/06 and F.T.(C) No.136/16 because at this stage, it is yet to be ascertained by the Tribunal as to whether the present petitioner is the same person or not. It is made clear that if the Foreigners Tribunal comes to the conclusion that the petitioner is the same person, the opinion of the Foreigners Tribunal No.4th, Morigaon will not be sustained and will stand set aside without any further order from this Court.

16. Accordingly, the petitioner shall appear before the Foreigners Tribunal on 31.01.2023 to prove as to whether that he is the same person who was proceeded in case No.F.T.(D)271/06 and F.T.(C) No.136/16. If the Tribunal comes to the finding that the petitioner is not the same person who was proceeded in case No.F.T.(D)271/06 and F.T.(C) No.136/16, the Tribunal shall give reason for coming to different conclusion for which the petitioner would be permitted to approach this Court again to challenge the order of the Tribunal as well as the order dated 25.03.2022 and take all the grounds which have been taken in the present petition.

17. It is made clear that since the nationality of the petitioner is already under cloud, he will remain on bail on furnishing a bail bond of Rs. 5,000/- (Rupees five thousand) with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Morigaon during the pendency of the proceeding before the Tribunal. The concerned Superintendent of Police (Border) shall also take steps for capturing the fingerprints and biometrics of the iris of the petitioner. The petitioner also shall not leave the jurisdiction of

Morigaon district without furnishing the details of the place of destination and necessary information including contact number to the Superintendent of Police (Border), Morigaon.

18. With the above observations and directions, the writ petition stands disposed of.

19. Copy of this order be furnished to the Superintendent of Police (Border), Morigaon for doing the needful.

JUDGE

JUDGE

Comparing Assistant