

GAHC010013322017



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

Case No. : WP(C)/982/2017

JALAL UDDIN
S/O- LT. AYUB ALI, VILL.- HATIMURIA, P.O. and P.S.- MOIRABARI, DIST.-
MORIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECY. OF THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI- 1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY- 6.

3:THE DY. COMMISSIONER
MORIGAON
DIST.- MORIGAON
ASSAM.

4:THE SUPERINTENDENT OF POLICE B
MORIGAON
DIST.- MORIGAON
ASSAM.

5:THE OFFICER-IN-CHARGE
MOIRABARI POLICE STATION
DIST.- MORIGAON
ASSAM

Advocate for the Petitioner : MR.M U MAHMUD

Advocate for the Respondent :

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

ORDER

Date : 12.04.2023

(A.M. Bujor Barua, J)

Heard Mr. M.U. Mahmud, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1, being the Union of India. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2, 4 and 5, being the authorities in the Home Department and Mr. P.K. Medhi, learned counsel for the respondent No. 3, being the Deputy Commissioner, Morigaon.

2. A reference was made to the Foreigners' Tribunal No. 5, Morigaon against Jamaluddin, son of Ayub Ali of village Hatimoria, PS Moirabari in the Morigaon district for rendering an opinion as to whether the proceedee is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of case numbers as narrated: M.F.T. (J.).2016/141, F.T.(D)274/2015 (New Number), F.T.(D)1153/2012 (Old Number) and D/N Case No. 2263/98 dt. 26/6/1998.

3. A notice in respect of F.T.(D) Case No. 274/2015 was issued by the Tribunal in the name of Jalaluddin son of Ayub Ali of village Hatimoria, PS Moirabari in the Morigaon district. Accordingly Jalaluddin appeared before the Tribunal and sought to discharge his burden under Section 9 of the Foreigners Act, 1946 that he is a citizen of India by relying and referring upon documents which may have been shown that Jalaluddin son of Ayub Ali of village Hatimoria is an Indian citizen. But the Tribunal rendered its opinion dated 30.11.2016

declaring Jalaluddin son of Ayub Ali of village Hatimoria to be a foreigner as because Jalaluddin had produced and relied upon documents pertaining to Jalaluddin son of Ayub Ali of village Hatimoria to establish his citizenship, but the proceeding was registered by the Tribunal against Jamaluddin son of Ayub Ali of village Hatimoria.

4. It appears that the Tribunal itself is confused as to against whom the proceeding should be initiated. If the proceeding is referred against Jamaluddin son of Ayub Ali of village Hatimoria, notice should have been served upon Jamaluddin son of Ayub Ali of village Hatimoria and not Jalaluddin son of Ayub Ali of village Hatimoria, although the two names may be of a similar pronunciation. We do not find any material on record that the Tribunal had put it across the petitioner that Jamaluddin son of Ayub Ali of village Hatimoria and Jalaluddin son of Ayub Ali of village Hatimoria are one and the same person. On the other hand it is the conclusion of the Tribunal that they are not one and the same person.

5. If the Tribunal is of the view that the proceeding ought to have been against Jalaluddin son of Ayub Ali of village Hatimoria, appropriate correction ought to have been made either in the name of the parties of the proceeding so that appropriate proceeding can be initiated against Jalaluddin son of Ayub Ali of village Hatimoria. However, having done neither and the reference still remaining in the name of Jamaluddin son of Ayub Ali of village Hatimoria and the notice having served on Jalaluddin son of Ayub Ali of village Hatimoria and Jalaluddin having made a claim that he had discharged the burden to prove that he is not a foreigner, the same cannot be rejected now by arriving at a conclusion that the proceeding is against Jamaluddin son of Ayub Ali of village Hatimoria and therefore documents produced by Jalaluddin in respect of

Jalaluddin would be unsustainable and therefore Jalaluddin would now declared to be a foreigner.

6. Accordingly, the opinion dated 30.11.2016 of the Foreigners' Tribunal No. 5, Morigaon is set aside and the matter is remanded back to the Tribunal to first make its decision against whom the proceeding has to be initiated. If the Tribunal is of the view that the proceeding is to be against Jalaluddin son of Ayub Ali of village Hatimoria, appropriate correction in the reference be made by following the due procedure of law and thereafter notice be served to Jalaluddin son of Ayub Ali of village Hatimoria. If the Tribunal is of the view that the reference is to be against Jamaluddin son of Ayub Ali of village Hatimoria, notice should be served upon Jamaluddin and appropriate proceeding may be initiated against Jamaluddin son of Ayub Ali of village Hatimoria. Upon being remanded back, the Tribunal to first consider the aforesaid aspect and thereafter proceed with the matter. Liberty remains with the Tribunal to proceed against either or both the persons i.e. Jalaluddin or/and Jamaluddin, whichever may be appropriate according to the Tribunal. As Jalaluddin son of Ayub Ali of village Hatimoria has filed his original documents before the Tribunal, upon an application being made to the Tribunal such document be allowed to be withdrawn by Jalaluddin son of Ayub Ali of village Hatimoria and if any proceeding is initiated against the said person, he may re-submit the documents before the Tribunal.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant