

GAHC010023002018



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

Case No. : WP(C)/735/2018

SALIM UDDIN
R.O. VILL ROWAPAR
P.S. MURAJHAR

VERSUS

THE UNION OF INDIA AND 7 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM INDIA,
DEPARTMENT OF HOME AFFAIRS, NEW DELHI

2:ELECTION COMMISSION OF INDIA
NEW DELHI

3:CO-ORDINATOR
NRC ASSAM

4:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY
HOME AND POLITICAL (B) DEPARTMENT
DISPUR
GUWAHATI

5:THE SUPERINTENDENT OF POLICE (BORDER)
HOJAI ASSAM

6:FOREIGNER TRIBUNAL
LANKA
HOJAI
ASSAM

7:THE DEPUTY COMMISSIONER
HOJAI ASSAM

8:THE OFFICER-IN-CHARGE

MURAJHAR POLICE STATIO

Advocate for the Petitioner : MR. B C DAS

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

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

JUDGMENT

Date : 26-07-2023

(A.M. Bujor Barua, J)

Heard Mr. BC Das, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the respondents in the NRC, Ms. A Verma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner.

2. The petitioner Salim Uddin was referred to the Foreigners Tribunal, Hojai for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of Case No. FT/H/125/2012, wherein the Tribunal rendered an opinion dated 31.05.2013 declaring the petitioner not to be a foreigner. Thereafter, another proceeding was initiated against the petitioner in the Foreigners Tribunal No. 7, Nagaon at Lanka, resulting in registration of FT(L)Case No. 663/2016, wherein the Tribunal rendered an opinion dated 21.09.2017 declaring the petitioner to be a foreigner. Being aggrieved, this writ petition is instituted.

3. Mr. BC Das, learned counsel for the petitioner takes a stand that the same petitioner having been declared to be an Indian citizen once by the

Foreigners Tribunal in Case No. FT/H/125/2012 by its opinion dated 31.05.2013, the subsequent proceeding would be unsustainable in law inasmuch as, it would be hit by the principles of res-judicata. It is also argued that as per the judgment of the Hon'ble Supreme Court rendered in Abdul Kuddus –vs- Union of India and others, reported in (2019) 6 SCC 604, the principles of res-judicata is also applicable in a proceeding before the Foreigners Tribunal.

4. The principles of res-judicata requires that the earlier proceeding must be between the same parties and secondly it must be decided. In order to satisfy as to whether there was any decision in the earlier proceeding, we have examined the opinion rendered by the Tribunal dated 31.05.2013 in case No. FT/H/125/2012. A reading of the opinion makes it discernible that the Tribunal had mentioned the various materials that had been relied upon by the petitioner and thereafter states "I have gone through and examined all the documents produced and submitted by the respondents very carefully and in consideration of all these above, I give my opinion that the respondent Md. Salim Uddin son of Abdul Mazid is not a foreigner."

5. A decision under the law is understood to be an adjudication based upon reasons that flows from the materials that may have been produced. But the afore-extracted conclusion of the Tribunal does not make it discernible that any reason had been stated other than describing the materials and arriving at its opinion that the person is not a foreigner. In our view, the same is not a decision, although it may be a personal view of the Member concerned. From such point of view, we are unable to accept the stand of the res-judicata being taken by the petitioner.

6. In the circumstance, in order to discharge the burden under section 9 of the Foreigners Act, 1946, we required the petitioner to produce any relevant

material which he may desire to rely upon to discharge the burden that he is not a foreigner. In such discharge, the petitioner relies upon the voters list of 1966 of village Rowar Par, police station-Murajhar in the Nagaon district, which contains the name of Abdul Mazid, son of Maskandar at serial No. 401 and Mayarun Nessa wife of Abdul Mazid at serial No. 402 and both of them are shown to be residing in the same house No. 128 and it is claimed that Abdul Mazid is the father of the petitioner. The petitioner further relies on the voters list of 1970 of village Rowar Par, which also contains the same information. The petitioner further relies on the voters list of 1997 of village Rowar Par, which contains the name of Abdul Mazid son of Maskandar at serial No. 659 and that of Neharun Nessa wife of Abdul Mazid at serial No. 660 and Salim Uddin son of Abdul Mazid at serial No. 663. It is claimed tht as the name of Salim Uddin appears along with Abdul Mazid in the same voters list of 1997 of village Rowar Par, the petitioner has discharged the burden under section 9 of the Foreigners Act, 1946 that he is not a foreigner.

7. Ms. A Verma, learned counsel for the respondents in the Home Department, Government of Assam has raised an objection that firstly the voters list are not complete and secondly, that the in between voters list from the years 1966 to 1997 have not been produced by the petitioner.

8. We are in agreement of such objection being raised. An objection is also raised that as per the voters list of 1966, the wife of Abdul Mazid is Mayarun Nessa whereas as per the voters list of 1997, the wife of Abdul Mazid is shown to be Neharun Nessa. So a question would remain as to whether Mayarun Nessa and Neharun Nessa are one and the same person or if they are different person, whether both are wives of Abdul Mazid.

9. In view of the above, we remand the matter back to the Tribunal to

examine the complete and continuous voters list of village Rowar Par from the years 1966 to 1997 and the petitioner shall produce the complete voters list of all the intervening years for examination of the Tribunal. The Tribunal would also examine as to whether Mayarun Nessa of the 1966 voters list and Neharun Nessa of the 1997 voters list are one and the same person or they are different persons and if different persons, whether both are wives of Abdul Mazid. The respondents in the Home Department, Government of Assam shall also make a verification and submit a report before the Tribunal, more specifically as to whether Salim Uddin of the 1997 voters list and Salim Uddin the petitioner proceedee are one and the same person. After doing the needful, the Tribunal shall pass a reasoned order thereon.

10. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 21.09.2017 and if it goes against the petitioner, consequence as per law shall follow.

11. The petitioners shall appear before the concerned Foreigners Tribunal on 21.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

12. The writ petition is allowed as indicated above.

13. Send back the LCR immediately. The photocopies of the aforesaid voters list produced before the Court be retained on record and the certified copy be returned back to the petitioner.

JUDGE

JUDGE

Comparing Assistant