

GAHC010023372020



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

Case No. : WP(C)/914/2020

ON DEATH OF MIYA HUSSAIN @ MESEN ALI, HIS SONS,
NAMELY SAHID ALI, CHAN MOHAMMAD AND SURAJ ALI (PETITIONER
NO. 2, 3 AND 4), R/O VILL-NO. 1 DOLABARI, P.O.-MAHABHAIRAB, P.S.-
TEZPUR, DIST-SONITPUR, ASSAM, PIN-784001

2: SAHID ALI
S/O MIYA HUSSAIN @ MESEN ALI
GRAND S/O LATE AFAJUDDIN
R/O VILL-NO. 1 DOLABARI
P.O.-MAHABHAIRAB
P.S.-TEZPUR
DIST-SONITPUR
ASSAM
PIN-784001

3: CHAND MIYA @ CHAN MOHAMMAD
S/O MIYA HUSSAIN @ MESEN ALI
GRAND S/O LATE AFAJUDDIN
R/O VILL-NO. 1 DOLABARI
P.O.-MAHABHAIRAB
P.S.-TEZPUR
DIST-SONITPUR
ASSAM
PIN-784001

4: SURAJ ALI
S/O MIYA HUSSAIN @ MESEN ALI
GRAND S/O LATE AFAJUDDIN
R/O VILL-NO. 1 DOLABARI
P.O.-MAHABHAIRAB
P.S.-TEZPUR
DIST-SONITPUR
ASSAM
PIN-78400

VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI-1

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

4:THE STATE CO-ORDINATOR OF NRC
BHANGAGARH
ASSAM
GHY-5

5:THE DEPUTY COMMISSIONER
SONITPUR
DIST-SONITPUR
ASSAM
PIN-784001

6:THE SUPERINTENDENT OF POLICE (B)
SONITPUR
DIST-SONITPUR
ASSAM
PIN-784001

7:THE OFFICER-IN-CHARGE
TEZPUR POLICE STATION
DIST-SONITPUR
ASSAM
PIN-78400

Advocate for the Petitioner : MR. M U MAHMUD

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

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

ORDER

25.05.2023

[A.M.Bujor Barua, J.]

Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Ms. A. Verma, learned counsel for the UOI; Ms. U. Das, learned counsel for the GoA; Ms. L. Devi, learned counsel for the GoA; and Mr. A.I. Ali, learned counsel for the Election Commission.

2. The petitioners Miya Hussain @ Mesen Ali; Chand Miya; Sahid Ali; and Suraj Ali had been referred to the Foreigners' Tribunal, Tezpur No. 1, Sonitpur for rendering an opinion as to whether they are the persons who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of F.T.[D] 1538/2012; F.T.[D] 1686/2012; F.T.[D] 1545/2012; and F.T.[D] 1543/2012, wherein an opinion dated 30.10.2019 had been rendered declaring the petitioners to be the foreigners. Being aggrieved this writ petition is instituted.

3. Four separate references were made against Miya Hussain, son of Afazuddin of village No. 1 Dolabari resulting in registration of F.T.[D] 1538/2012; Chand Miya, son of Miya Hussain of village No. 1 Dolabari resulting in registration in F.T.[D] 1686/2012; Sahid Ali, son of Miya Hussain of village No. 1 Dolabari resulting in registration of F.T.[D] 1545/2012; and Suraj Ali, son of Miya Hussain of village No. 1 Dolabari resulting in registration of F.T.[D] 1543/2012. Going by the name, identity and residents of the proceedees, the Tribunal deemed it appropriate to pass a common opinion in the four reference cases indicated above. It is always safer to pass individual opinions in separate

references, although in certain cases it may appear that all the proceedees are from the same family.

4. We accordingly interfere and set aside the common opinion dated 30.10.2019, in aforesaid reference cases. During the pendency of the present writ proceeding, the proceedee Miya Hussain, son of Afazuddin died and in his place Chand Miya, Sahid Ali and Suraj Ali being the original writ petitioner proceedee nos. 2, 3 and 4 have been substituted as legal heirs of the deceased writ petitioner no. 1, Miya Hussain @ Mesen Ali.

5. As the issue of citizenship of the petitioners have not been gone into the question of merit by the court and it is only on a technical reason that it has been interfered and remanded back, we provide that the three writ petitioners namely, Chand Miya, Sahid Ali and Suraj Ali shall appear before the Tribunal and prove their individual cases that they are citizens of India by providing any material that may desire to produce, including the materials that have already been placed before the Tribunal.

6. As Miya Hussain @ Mesen Ali had died in the meantime the reference made against him may be returned back by the Tribunal to the referring authority. In the event the citizenship of Miya Hussain @ Mesen Ali would remain undetermined that is not conclusively determined whether he is a citizen or he is not a citizen and as the petitioner nos. 2, 3 and 4 namely, Chand Miya, Sahid Ali and Suraj Ali would be required to prove their citizenship which can be proved only through their father Miya Hussain @ Mesen Ali, the three petitioners would also be at liberty to produce any material before the Tribunal to prove that Miya Hussain @ Mesen Ali was also a citizen of India.

7. As it is a reference of the year 2012, we request the Tribunal to dispose of the matter by passing separate opinions within a period of 3 [three]

months from the date of the appearance of the petitioner nos. 2, 3 and 4.

8. Upon undertaking the exercise, the Tribunal may pass separate reasoned order in F.T.[D] 1538/2012; F.T.[D] 1686/2012; F.T.[D] 1545/2012; and F.T.[D] 1543/2012.

9. The petitioner nos. 2, 3 and 4 to appear before the Tribunal on 23.06.2023.

10. Till the reasoned order is passed, no coercive action be taken against the petitioners.

Writ petition stands disposed of in the above terms.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant