

GAHC010030992018



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

Case No. : WP(C)/962/2018

JAYNAL ABEDIN
VILLAGE NASATRA
PS ABHAYAPURI

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE SECY TO THE GOVT OF INDIA, MINISTRY OF
HOME AFFAIRS, SHASTRI BHAWAN, TILAK MARG NEW DELHI

2: THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

3: THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI

4: THE STATE CO ORDINATOR
NATIONAL REGISTER OF CITIZENS
GS ROAD
BHANGAGARH
GUWAHATI

5: THE MEMBER
FOREIGNERS TRIBUNAL
BONGAIGAON
NO.2
ABHAYAPURI

ASSAM

6:THE SUPERINTENDENT OF POLICE(B)
BONGAIGAON

7:THE DEPUTY COMMISSIONER
BONGAIGAON
ASSA

Advocate for the Petitioner : MR. S HOQUE

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

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

Date : 27-01-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. S Hoque, learned counsel for the petitioner. Also heard Mr. B Chakravarty, learned CGC for the respondent No.1 being the Union of India, Mr. A Ali, learned counsel for the respondent No.2 being the Election Commission of India, Ms. L Devi, learned counsel for the respondent No.4 being the authorities under the NRC, Ms. A Verma, learned Special Standing Counsel, Foreigners' Tribunal for respondents No. 3, 5 and 6 and Ms. M Das, learned Government Advocate for the respondent No.7 being the Deputy Commissioner, Bongaigaon.

2. The petitioner, namely, Jaynal Abedin claims that he was earlier referred to the Foreigners' Tribunal Goalpara for an adjudication as to whether he is a

person who had entered the State of Assam subsequent to 25.03.1971, which resulted in registration of FT Case No.1487/G/08 wherein the petitioner was declared to have been found not to be an illegal migrant of any stream, rather he was found to be regular voter of village Nasatra under Jania LAC since 1983 before his shifting to Pancharatna NC in 1997. A reading of the order does not make it discernible as to how the Tribunal arrived at its conclusion that the petitioner is a citizen of India who was present prior to 25.03.1971 and all that the order shows is that he was found to be a regular voter of village Nasatra under Jania LAC from 1983. The impugned order does not make it discernible as to when and in what manner the petitioner had shifted from one village to another.

3. But, be that as it may, it has to be understood to be a judgment which is holding its force on the premises that it is not assailed by the respondents before any other forum. In the circumstance, the petitioner was again referred for an adjudication as to whether he is a person who had entered the State of Assam subsequent to 25.03.1971 which resulted in the registration of FT Case No.BNGN(2)/APR/FT/30/2016 and FT Case No.BNGN-2/APR/FT-236/2017. Having been referred to the Foreigners' Tribunal for an adjudication on the same cause for the second time, the petitioner assails the order dated 10.01.2017 in the aforesaid Foreigners' Tribunal cases on the ground that a second proceeding for the same purpose would not be maintainable under the law. The petitioner is also aggrieved by a subsequent notice from the same Foreigners Tribunal dated 17.03.2017.

4. Being aggrieved this writ petition is instituted. There is an interim order

dated 23.02.2018 by which further proceedings in No.BNGN(2)/APR/FT/30/2016 and FT Case No.BNGN-2/APR/FT-236/2017 had been stayed.

5. Having taken up the matter for its final consideration, it is noticed that in fact, there is a judgment dated 01.07.2011 in Foreigners Tribunal Goalpara in respect of the present writ petitioner Joynal Abedin. As the law as regards maintainability of a second reference case in a foreigners case has been settled by the Supreme Court in its decision rendered in Abdul Kuddus Vs. Union of India and Others reported in (2019) 6 SCC 604, we are of the view that a subsequent proceedings in No.BNGN(2)/APR/FT/30/2016 and FT Case No.BNGN-2/APR/FT-236/2017 would not be maintainable against the petitioner for the same cause of action. As the judgment dated 01.07.2011 in FT Case No.1487/G/08 of the Foreigners Tribunal Goalpara exists wherein the present petitioner was a person who was referred, we remand the matter back to the Foreigners Tribunal Bongaigaon No.2 at Abhyapuri for an examination as to whether the reference made against the present petitioner, who had earlier been referred in FT Case No.1487/G/08 of the Foreigners Tribunal Goalpara, would be maintainable in law. If upon examination, the conclusion to be arrived would be that the petitioner was earlier referred to the Foreigners Tribunal Bongaigaon No.2 at Abhyapuri in FT Case No.1487/G/08, and there is a final judgment/opinion rendered, the Foreigners Tribunal Bongaigaon No.2 at Abhyapuri shall pass appropriate order on the maintainability of the subsequent references. But at the same time, as the earlier judgment dated 01.07.2011 in FT Case No.1487/G/08 of the Foreigners Tribunal Goalpara is referred by the petitioner claiming the right of *res judicata*, liberty would remain with the State respondents to assail the said judgment dated 01.07.2011 in FT Case

No.1487/G/08, if so advised, in view of the infirmities noticed above.

6. Accordingly, the petitioner is directed to appear before the Foreigners Tribunal Bongaigaon No.2 at Abhyapuri on 28.02.2023.

7. Writ petition stands disposed of in the above terms.

8. Return back the LCR.

JUDGE

JUDGE

Comparing Assistant