

GAHC010033992020



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

Case No. : WP(C)/2040/2020

MARFUJUL ISLAM AND 3 ORS.

S/O- MD. NIZAM UDDIN, R/O- VILL. KALIKAJARI, P.S. MIKIRBHETA, DIST-
MORIGAON, ASSAM.

2: MUSSTT. NASIMA KHATUN

D/O- MD. NIZAM UDDIN

R/O- VILL. KALIKAJARI

P.S. MIKIRBHETA

DIST- MORIGAON

ASSAM.

3: MUSSTT. JANNATUN NAHAR

D/O- MD. NIZAM UDDIN

R/O- VILL. KALIKAJARI

P.S. MIKIRBHETA

DIST- MORIGAON

ASSAM.

4: MUSSTT. MANUWARA KHATUN

W/O- MD. NIZAM UDDIN

R/O- VILL. KALIKAJARI

P.S. MIKIRBHETA

DIST- MORIGAON

ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS.

REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, JAISALMER HOUSE, 26, MANSINGH ROAD, NEW DELHI- 110011.

2: THE STATE OF ASSAM

REP. BY ITS SECY.

DEPTT. OF HOME

DISPUR
GHY.- 06.

3:THE SUPDT. OF POLICE (B)
MORIGAON
DIST. MORIGAON
ASSAM. PIN- 782105.

4:THE ELECTION OFFICER
MORIGAON
DIST- MORIGAON
ASSAM
PIN- 782105

Advocate for the Petitioner : MR. U DUTTA

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

09-10-2023

(M.R.Pathak, J)

Heard Mr. B. Dutta, learned counsel appearing on behalf of Mr. U. Dutta, learned counsel for the petitioners and Ms. L. Devi, learned Central Government Counsel for the respondent No. 1. Also heard Mr. G. Sarma, learned Standing counsel, Home Department of the State for the respondent Nos. 2 & 3 and Mr. H. Kalita, learned counsel appearing on behalf of Mr. A.I.Ali, learned Standing counsel, Election Commission of India for the respondent No. 4.

2. In a reference being made by the Superintendent of Police (Border), Morigaon during the force of the IM(D)T Act 1983, vide IM(D)T Case No. 1160/2002 dated 13.12.2002, after the said Act was declared ultra-vires by the Hon'ble Supreme Court in the case of *Sarbananda Sonowal Vs. the Union of India*, reported in (2005) 5 SCC 665, a fresh notice under the provisions of the Foreigners (Tribunals) Order, 1964 and the Foreigners Act, 1946 was issued by the Foreigners' Tribunal No. 3rd, Morigaon in Case No. F.T.(C) 209/2015 against Md. Nizam Uddin and the petitioner Nos. 1 to 3,

namely, Md. Marfujul Islam; Mustt. Nasima Khatun and Mustt. Jannatun Nahar who are sons and daughters, respectively of said Md. Nizam Uddin as well as his wife Musstt. Manuwara Khatun, petitioner No.4.

3. The petitioners along with said Md. Nizam Uddin appeared before the Foreigners' Tribunal No. 3rd, Morigaon.

4. By the impugned order dated 04.10.2018 passed in said Case No. F.T.(C) 209/2015, the learned Member, Foreigners' Tribunal No. 3rd, Morigaon, Assam opined said Md. Nizam Uddin along with four other petitioners named above as illegal migrants/foreigners under the Foreigners Act, 1946 who had entered into the territory of India on or after 25.03.1971.

5. Against the said order dated 04.10.2018 passed in Case No. F.T.(C) 209/2015, noted above, the petitioners herein along with said Md. Nizam Uddin, preferred a review petition being MISC Case No. 28/2018 under Section 3A(2) of the Foreigners (Tribunals) Order, 1964 for review of the said order dated 04.10.2018 and the learned Member, Foreigners' Tribunal No. 3rd, Morigaon by its order dated 04.09.2019 dismissed the said review petition holding that the same is devoid of any merit.

6. Being aggrieved with the said orders dated 04.10.2018 passed in Case No. F.T.(C) 209/2015 and 04.09.2019 passed in MISC Case No. 28/2018, noted above, the petitioners have filed this writ petition on 12.02.2020.

7. A co-ordinate Bench of this Court in the cases of *Abdul Motin and 2 Others Vs. the State of Assam and 5 Others* [(WP(C) No. 1610/2017] as well as *Aktara Khatun Vs. the State of Assam and 5 Others* [WP(C) No. 360/2017], both disposed of on 02.05.2017 reported in *2017 (2) GLT 974* and *Sudhir Roy Vs. the Union of India and 5 Others* upheld that "the Foreigners Tribunal can proceed only with regard to the person concerned against which a reference is forwarded by the concerned authority i.e., the Superintendent of Police (Border) as said reference is made only after causing enquiry whether the person concerned is a Foreigner under the Foreigners Tribunal Act, 1946 or Indian citizen".

8. In the case in hand, we have seen that the Superintendent of Police (Border), Morigaon vide IM(D)T Case No. 1160/2002 dated 13.12.2002 referred the matter of one Md. Nizam Uddin, son of Muzafur Hussain @ Muzafor Hussain, Village- Kalikajari, P.S.-Mikirbheta, District-Morigaon, whereas the learned Member, Foreigners' Tribunal No. 3rd, Morigaon in Case No. F.T.(C) 209/2015 issued

notice under the Foreigners (Tribunals) Order, 1964 and the Foreigners Act, 1946 not only to said Md. Nizam Uddin but also to his wife, son and two daughters, i.e., the petitioners herein.

9. After hearing the learned counsels for the parties and considering the judgments of this Court passed earlier in the cases of *Aktara Khatun* (supra) as well as *Sudhir Roy* (supra), the findings of the Foreigners' Tribunal No. 3rd, Morigaon passed in Case No. F.T.(C) 209/2015 by order dated 04.10.2018 as well as the order dated 04.09.2019 passed by the learned Member, Foreigners' Tribunal 3rd, Morigaon in MISC Case No. 28/2018 rejecting the application filed under Section 3A(2) of the Foreigners (Tribunal) Order, 1964 are hereby set aside and quashed with regard to the present petitioners, namely, **Md. Marfujul Islam; Mustt. Nasima Khatun, Mustt. Jannatun Nahar and Musstt. Manuwara Khatun.**

10. Though such findings against the petitioners is set aside and quashed, needless to say that the Superintendent of Police (Border), Morigaon shall make a fresh enquiry against the present petitioners and after such enquiry, shall do the needful following the due procedure and in accordance with law.

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

JUDGE

JUDGE

Comparing Assistant