

GAHC010037862019



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

Case No. : WP(C)/1482/2019

MUNTAJ ALI
S/O. (LATE) MABED ALI, R/O VILLAGE ATHAKATA, P.S. DHULA, DIST.
DARRANG, ASSAM, PIN- 784146.

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI. PIN-110001.

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
GOVT. OF ASSAM
ASSAM SECRETARIAT
DISPUR GUWAHATI
ASSAM. PIN- 781006.

3:THE SUPERINTENDENT OF POLICE (BORDER),DARRANG
MANGALDOI
DIST. DARRANG
ASSAM. PIN-784125.

4:THE STATE COORDINATOR OF NRC
OFFICE OF THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATIASSAM. PIN- 781005.

5:THE MEMBER
FOREIGNERS TRIBUNAL NO. 2
KAMRUP(M)
HEDAYATPUR,GUWAHATI
PIN- 781001

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

04.05.2023

(AM Bujor Barua, J)

Heard Mr. S. Dey, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. A.I. Ali, learned counsel for the authorities under the Election Commission of India and Mr. G. Sarma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as Superintendent of Police (Border), Darrang, Mangaldai.

2. The petitioner, Muntaj Ali had been referred to the Foreigners Tribunal, Kamrup (M) 2nd, Guwahati for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 24.03.1971 resulting in registration of Case No. F.T. Case No.562/2017. The learned Tribunal rendered an opinion dated 25.01.2019 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In the writ proceeding, the petitioner relies on the voters list of 1970 of village Athakata, Mouza Shyamabari of Darrang District which contains the

name of Mabed Ali, son of Audin at Serial No.39 and that of Jabed Ali, son of Mabed at Serial No.41 where both of them are shown to be residing in House No.14. It is claimed that Mabed Ali is the father of the petitioner whereas Jabed Ali is the brother. Jabed Ali had deposed before the Tribunal as DW2 wherein in his evidence on affidavit stated that his grandfather is Maijuddin who was granted Annual Khiraj Patta under the Colonisation Scheme at village Athakata and that Mabed Ali is his father who married to Maimal Nessa. Out of their wedlock, 8 (eight) children were born and out of which Jabed Ali is one of the sons and Muntaj Ali is another son. Accordingly, DW2 states that Muntaj Ali is the son of Mabed Ali whose names appear in the voters list of 1970 and therefore, the burden under Section 9 of the Foreigners Act, 1946 had been discharged.

5. We have noticed that DW2 Jabed Ali had not been cross-examined by the respondents through the Home Department, Government of Assam although some questions were put by the Tribunal as court questions and if the evidence rendered by Jabed Ali is acceptable, perhaps, the burden to prove that Muntaj Ali is a citizen had been discharged.

6. Under the circumstances, the matter is remanded back to the Tribunal to enable the State through the Home Department, Government of Assam to cross-examine DW2 Jabed Ali. The State may also make their own verification as to whether Muntaj Ali referred by Jabed Ali and Muntaj Ali, the petitioner-proceedee is one and the same person. Upon doing the needful, a reasoned order be passed by the Tribunal.

7. Petitioner is at liberty to provide any further material. It is stated that as per subsequent voters lists, the names of Jabed Ali and Muntaj Ali are available in the same voters list. The Tribunal may also look into such aspect while

considering the matter.

8. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 25.01.2019 rendered in F.T. Case No.562/2017 and if it goes against the petitioner, consequence as per law shall follow.

9. The petitioner shall appear before the Foreigners Tribunal, Kamrup(M) 2nd, Guwahati on 17.06.2023.

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

11. The writ petition is disposed of as indicated above.

12. Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant