

GAHC010039132018



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

Case No. : WP(C)/1267/2018

ABDUL KADIR AND 8 ORS.

S/O LT. MIYA BAKSH @ LT. MIA BOX, VILL- SOLMARI, PS- BHELOWGURI,
PO- DOLOIGAON, DIST. MORIGAON, ASSAM, PIN-782126

2: HAMIDA KHATUN

W/O ABDUL KADIR

D/O LT. MONCHUR ALI @ MANSUR ALI

VILL. DAKHIN CHENIMARI

PS- LAHARIGHAT

PO- KATHONI

DIST. MORIGAON

ASSAM

PIN-782127

3: MUBASHARIF @ MUBASHIR AHMED

S/O ABDUL KADIR

VILL- SOLMARI

PS- BHELOWGURI

PO-DOLOIGAON

DIST. MORIGAON

ASSAM

PIN-782126

4: ANSARUL @ ANHARUL HOQUE

S/O ABDUL KADIR

VILL-SOLMARI

PS-BHELOWGURI

PO-DOLOIGAON

DIST. MORIGAON

ASSAM

PIN-782126

5: JAKARIA @ JAKARIA ALAM

S/O ABDUL KADIR

VILL-SOLMARI
PS- BHELOWGURI
PO- DOLOIGAON
DIST. MORIGAON
ASSAM
PIN-782126

6: AYAHIA @ YAHIA AHMED
S/O ABDUL KADIR
VILL- SOLMARI
PS BHELOWGURI
PO- DOLOIGAON
DIST. MORIGAON
ASSAM
PIN-782126

7: NARZINA @ NAZIA BEGUM
D/O ABDUL KADIR
VILL- SOLMARI
PS- BHELOWGURI
PO DOLOIGAON
DIST. MORIGAON
ASSAM
PIN

8: MARZINA @ MARZIA BEGUM
D/O ABDUL KADIR
VILL- SOLMARI
PS- BHELOWGURI
PO- DOLOIGAON
DIST. MORIGAON
ASSAM
PIN-782126

9: TANIA @ TAYYIBA BEGUM
D/O ABDUL KADIR
VILL- SOLMARI
PS- BHELOWGURI
PO- DOLOIGAON
DIST. MORIGAON
ASSAM
PIN-78212

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF INDIA, HOME DEPARTMENT, NEW DELHI-1, INDIA

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

3:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5

4:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE COMMISSIONER
NIRVACHAN SADAN
ASHOKA ROAD
DELHI-110001

5:THE DEPUTY COMMISSIONER
MORIGAON
DIST. MORIGAON
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST. MORIGAON
ASSA

Advocate for the Petitioner : MR. Z HAMMAD

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

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

ORDER

Date : 17.03.2023
(AM Bujor Barua, J)

Heard Mr. Z Hammad, learned counsel for the petitioners. Also heard Mr. B

Chakraborty, learned counsel for the respondent no. 1 being the authorities under the Union of India, Ms. A Verma, learned counsel for the respondents no. 2 and 6 being the authorities under the Home Department of the Government of Assam, Ms. L Devi, learned counsel for the respondent no. 3 being the authorities under the NRC, Mr. AI Ali, learned counsel for the respondent no. 4 being the authorities under the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 5 being the Deputy Commissioner, Morigaon.

2. The petitioner No. 1 Abdul Kadir had been referred to the Foreigners' Tribunal No. 5, Morigaon for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, resulting in registration of Case No. F.T.(C) 275/2016 wherein the Tribunal rendered an opinion dated 27.11.2017 declaring the petitioner to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. The petitioners in the writ proceeding refer to the voters' list of 1965 of village Solmari Gaon Mouza Moirabari, P.S. Laharighat in the Nagaon district which contains the name of Mia, S/O Amjat at Sl. No. 18. The petitioner also refers to the voters' list of 1970 of village Salmari Gaon which contains the name of Mia Box, S/O Amjat at Sl. No. 18. It is noticed that the house number in the 1965 and 1970 voters' list is the same house no. 3.

5. The petitioners also refer to the voters' list of 1989 of village Solmari which contains the name of A. Kadir, S/O Haji Mia at Sl. No. 47 and the voters' list of 1993 of village Ka) Solmari Gaon which contains the name of A. Kadir, S/O Haji Mia Box at Sl. No. 301. The petitioner claims that he is the son of Mia/Mia

Box/Haji Mia/Haji Mia Box as appearing in the aforesaid voters' lists and as Mia/Mia Box/Haji Mia/Haji Mia Box are one and the same person, therefore, he could establish his citizenship through Mia of voters' list of 1965 and Mia Box of the voters' list of 1970.

6. In view of the above, in respect of the petitioner no. 1, the matter stands remanded back to the Tribunal where the petitioner no. 1 would produce the complete voters' lists of the aforesaid years including the upto date voters' lists to establish that he is a son of Mia of 1965 voters' list and Mia Box of 1970 voters' list.

7. In respect of the petitioner no. 2 who is the wife of the petitioner no. 1, she would have to prove her citizenship through the linkage with her own father and not through the petitioner no. 1. For the purpose, the claim of the petitioner no. 2 is also remanded back to the Tribunal to enable her to produce any material that she may produce to establish the claim of her citizenship through her own father.

8. As regards the other petitioners, the outcome of they being a citizen would depend on the citizenship of the petitioner no. 1, as may be declared by the Tribunal.

9. Although Mr. Z Hammad, learned counsel for the petitioner refers to an earlier judgment of this Court in *Sudhir Roy v. Union of India reported in 2019 (1) GLT 353* wherein in paragraph 9 it had been provided that although there can be a presumption against the family members of a proceedee who had been declared as foreigner, but at the same time such presumption would by itself not lead to a conclusion that the family members of a proceedee who had been declared to be a foreigner are also foreigners and therefore, although there may

be a good cause of initiating an enquiry and making a reference but without following the due procedure of law of conducting an enquiry and making a reference, the family members cannot be declared to be a foreigner. We clarify that the said principle would be a good principle in law but if it is an admitted position of the children that they are the children of a person who had been declared to be a foreigner and as they would also have to establish their citizenship through the citizenship of their father, it may be a futile exercise to again make an enquiry and proceed against the family members but on the other hand if a proceedee, who is projected to be a family member of a person who is declared to be foreigner intends to take the stand that the declared foreigner is not their father and they claim their citizenship through some other person, in such event, there would be a necessity of an enquiry and a separate reference.

10. All the petitioners to appear before the Tribunal on 21.04.2023.
11. Any reasoned order in respect of the individual petitioner that may be passed shall prevail over the opinion dated 27.11.2017.
12. Till such reasoned order is passed, no coercive action be taken against the petitioners in respect of the opinion dated 21.11.2017 passed in Case No. F.T.(C) 275/2016.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant