

GAHC010058822023



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

Case No. : WP(C)/1711/2023

THANDU MIYA
S/O- LATE IBRAHIM ALI,
VILL- GAMARIGURI,
P.S- BARPETA ROAD, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, SASTRI BHAWAN, NEW DELHI- 110001.

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

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE SECRETARY
NIRVACHAN BHAWAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
BARPETA

ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSA

Advocate for the Petitioner : MR. R ALI

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

BEFORE

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

O R D E R

27.03.2023

(A.M. Bujor Barua, J)

Heard Mr. R Ali, learned counsel for the petitioner. Also heard Ms. B Sarma, learned CGC appearing on behalf of respondents in the Union of India, Mr. G Sarma learned counsel for the State respondents in the Home Department of Government of Assam, Ms. L Devi, learned counsel for the respondents in the NRC, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Barpeta.

2. The petitioner Thandu Miya son of Ibrahim Ali of village Gamariguri is aggrieved inasmuch as although the notices of the Tribunal are in the name of Thandu Miya, son of Moiza resident of village Kaljhar, but the notices had been forcefully served on the petitioner Thandu Miya son of Ibrahim Ali of village Gamariguri.

3. When the aforesaid discrepancy was brought to the notice of the Tribunal, the Tribunal by its order dated 31.08.2022 in FT Case No. 660/2017 arrived at its conclusion that CW-1, who happens to be the process server had

deposed before the Tribunal that the proceedee Thandu Miya son of Moiza @ Moiza Miya @ Ibrahim Ali was found with the help of the Gaon Bura and accordingly notice was served. In other words, it would be the material that the Gaonbura may have produced that Moiza @ Moiza Miya and Ibrahim Ali are one and the same person. A further aspect would remain that the Thandu Miya son of Moiza is of village Kaljhar, whereas Thandu Miya son of Inrahim is of village Gamariguri, which again indicates of two different villages.

4. As the Tribunal had arrived at its satisfaction that the two persons Thandu Miya son of Moiza of village Kaljhar and Thandu Miya son of Ibrahim Ali of village Gamariguri are one and the same person without any reasonable and acceptable material, we set aside the order dated 31.08.2022 and all subsequent orders of the Tribunal in FT Case No. 660/2017.

5. The Tribunal may now require the State authorities to produce any relevant material which may indicate that Thandu Miya son of Moiza of village Kaljhar and Thandu Miya to whom the notices are served being the son of Ibrahim Ali of village Gamariguri are one and the same person.

6. Till such appropriate material is produced for the satisfaction that the two persons are same, no proceeding be initiated against Thandu Miya son of Ibrahim Ali of village Gamariguri without following the due procedure of law, meaning thereby that if the referring authority requires Thandu Miya son of Ibrahim Ali of village Gamariguri may also be proceeded, but it be done by following the due procedure of law, but not on the basis of the notice and reference against Thandu Miya son of Moiza of village Kaljhar.

7. The petitioner shall appear before the Foreigners Tribunal No. 10, Barpeta on 04.05.2023.

8. The writ petition is allowed as indicated above.

JUDGE

JUDGE

Comparing Assistant