

GAHC010065942023



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

Case No. : WP(C)/1759/2023

MUSLEM MULLAH @ MUSLEM @ MUSLEM MALLA
S/O- LATE AJAHAR MULLAH @ AJAHAR, R/O- KALDI, P.S. MUKALMUA,
DIST.- NALBARI, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, HOME DEPTT., NEW
DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOK ROAD
NEW DELHI
PIN- 110001

4:THE DEPUTY COMMISSIONER
NALBARI
DIST.- NALBARI
ASSAM
PIN- 781335

5:THE SUPERINTENDENT OF POLICE (B)
NALBARI
DISTRICT- NALBARI
ASSAM

PIN- 781335

6:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI-0

Advocate for the Petitioner : MR S HOQUE

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

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

ORDER

Date : 03.04.2023
(A.M. Bujor Barua, J)

Heard Mr. S. Hoque, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 6, being the Union of India and the State Co-ordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 5, being the authorities in the Home Department; Mr. A. Ali, learned counsel for the respondent No. 3, being authorities in the Election Commission of India and Ms. U. Das, learned counsel for the respondent No. 4, being the Deputy Commissioner, Nalbari.

2. The petitioner Muslem Mullah @ Muslem @ Muslem Malla was referred to the Foreigners' Tribunal No. 3, Nalbari for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971. The petitioner entered appearance but his conduct before the appearance gives the impression that the petitioner is not serious in discharging the burden under Section 9 of the Foreigners Act, 1946 that he is a citizen of India and rather he is trying to adopt all possible means to prevent the

Tribunal from discharging its duties. As a result the order dated 07.10.2022 was passed wherein the reasons as given thereof is as extracted:

“07/10/2022

Proceedee is absent with steps.

Learned Counsel for the proceedee filed a petition stating inter alia that due to ailment, proceedee is unable to appear before this Tribunal today. The relevant portion of the petition is re-produced below:-

“Sir,

With due respect the petitioner begs to state that the petitioner is the engaged advocate of the above noted case and the case is fixed today for further evidence.

That, the opp. party informed the petitioner over telephone due to ailment that opp. party as well as the witnesses couldn't appear today before the Hon'ble Tribunal. Hence, the present petition for adjourn the case today.

It is therefore prayed that your honour may admit this petition and be pleased to condone the default of the opp. party and also be pleased to fixing another date for further evidence and oblige. Dt-7/10/22”

I have gone through the record. On perusal of record it is found that along with the evidence-on-Affidavit proceedee filed a petition praying for adducing further evidence. In the said petition proceedee stated that he wants to examine Sri Gopal Ch. Boro, village Headman of Kaldi village, the Election Officer, Nalbari, Md. Abul Mullah and Chan Mahammad Mullah. After hearing the parties prayer was allowed fixing 01/07/2022 for cross & further evidence. On 01/07/2022 proceedee was absent and learned Counsel for the proceedee filed a petition stating inter alia that due to flood in the locality of the proceedee, proceedee was unable to appear before this Tribunal for his cross-examination along with other witnesses. Said prayer was allowed fixing 18/08/2022 for cross & further evidence. On 18/08/2022 proceedee was cross-examined by the State. But, proceedee has not taken steps for issuance of summon to the village Headman of Kaldi village and the Election Officer, Nalbari. On 18/08/2022 learned Counsel for the proceedee submits that proceedee does not want to examine the village Headman of Kaldi village and the Election Officer, Nalbari. Therefore, proceedee was allowed to examine other 2 independent witnesses i.e. Md. Abul Mullah and Chan Mahammad Mullah fixing 07/09/2022 for further evidence. On 07/09/2022 also proceedee was absent and learned Counsel for the proceedee filed a petition stating inter alia that due to ailment, proceedee was unable to appear before this Tribunal along with other witnesses. No medical certificate has been annexed along with the petition. After hearing the parties said prayer was allowed fixing today for further evidence as last chance. The order dated 07/09/2022 is re-produced below:-

“07/09/2022

Proceedee is absent with steps.

Learned Counsel for the proceedee filed a petition stating inter alia that

due to sudden ailment, proceedee is unable to appear before this Tribunal today along with witnesses. Accordingly, prayed for fixing another date.

Heard. Perused the petition.

Prayer is allowed as last chance.

Fix 07/10/2022 for further evidence. If the proceedee fails to appear along with witnesses on the next date fixed, evidence of O.P.Ws. shall automatically closed"

Today also proceedee is absent and learned Counsel for the proceedee filed similar nature of petition without any Medical certificate. Learned Counsel for the proceedee fails to clarify the nature of ailment of the proceedee. Learned Counsel for the proceedee also fails to clarify that as to why the witnesses Md. Abul Mullah and Chan Mahammad Mullah are not present before this Tribunal for their examination and/or as to whether both the aforesaid witnesses are also suffering from illness. Therefore, contents of the petition is not trustworthy.

In view of the discussions made above, this Tribunal has no option but to close the evidence of O.P.Ws. Accordingly, evidence of O.P.Ws. is closed.

Fix 14/11/2022 for evidence of State/Referring Authority.

Learned Assistant Government Pleader shall take steps."

3. A reading of the reasons provided in the afore-extracted portion makes the conduct of the petitioner proceedee before the Tribunal clear enough.
4. In the circumstance, no infirmity can be noticed in the order of the Tribunal dated 07.10.2022 that the evidence of the proceedee had been closed. However, for the interest of justice, we give another opportunity to the petitioner to appear before the Tribunal and render his evidence.
5. For the past conduct of the petitioner, a cost of Rs. 5,000/- is imposed upon the petitioner to be paid to the District Legal Services Authority, Nalbari and upon showing proof of payment of the cost, the petitioner to appear before the Tribunal on 11.05.2023. In the Tribunal, the petitioner is expected to cooperate with the process and allow the Tribunal to render its opinion on its merit.
6. The petitioner to render the complete evidences as he may desire to do so before the Tribunal within a period of two months from his appearance unless appropriate reasons can be shown for any further time and thereupon the

Tribunal to render its opinion.

Writ petition stands disposed of as indicated above.

J U D G E

J U D G E

Comparing Assistant