

GAHC010067402018



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

Case No. : WP(C)/2142/2018

JALIMUDDIN AND 6 ORS
S/O- LATE SURJAT ALI @ SURAJ ALI, R/O- VILL- SALMARI, P.O-
MOIRABARI, P.S- MOIRABARI, PIN- 782126, DIST- MORIGAON, ASSAM

2: HAJERA KHATUN
W/O- MD. JALIMUDDIN
D/O- LATE REJAT ALI
R/O- VILL- SALMARI
P.O- MOIRABARI
P.S- MOIRABARI
PIN- 782126
DIST- MORIGAON
ASSAM

3: HAIDAR ALI
S/O- MD. JALIMUDDIN
R/O- VILL- SALMARI
P.O- MOIRABARI
P.S- MOIRABARI
PIN- 782126
DIST- MORIGAON
ASSAM

4: WAKIDUL ALI @ WAKIM ALI
S/O- MD. JALIMUDDIN
R/O- VILL- SALMARI
P.O- MOIRABARI
P.S- MOIRABARI
PIN- 782126
DIST- MORIGAON
ASSAM

5: JAHIRUL ISLAM
S/O- MD. JALIMUDDIN

R/O- VILL- SALMARI
P.O- MOIRABARI
P.S- MOIRABARI
PIN- 782126
DIST- MORIGAON
ASSAM

6: IMDADUL ISLAM
S/O- MD. JALIMUDDIN
R/O- VILL- SALMARI
P.O- MOIRABARI
P.S- MOIRABARI
PIN- 782126
DIST- MORIGAON
ASSAM

7: ANARUL
S/O- MD. JALIMUDDIN
R/O- VILL- SALMARI
P.O- MOIRABARI
P.S- MOIRABARI
PIN- 782126
DIST- MORIGAON
ASSA

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI

2:THE CHIEF ELECTION COMMISSIONER
ELECTION COMMISSION OF INDIA
ASHOKA ROAD
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY ITS SECRETARY
GOVT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 07

5:THE STATE COORDINATOR
OFFICE OF THE STATE COORDINATOR OF NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GUWAHATI- 781005

6:THE DEPUTY COMMISSIONER
MORIGAON
DIST- MORIGAON
ASSAM

7:THE SUPERINTENDENT OF POLICE (B)
MORIGAON
DIST- MORIGAON
ASSAM

8:THE OFFICER-IN-CHARGE
MOIRABARI POLICE STATION
MORIGAON
DIST- MORIGAON
ASSA

Advocate for the Petitioner : MR. K LAHKAR

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

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

ORDER

Date : 11.08.2023
(AM Bujor Barua, J)

Heard Mr. KM Hassan, learned counsel for the petitioners. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 5 being the authorities under the Union of India and NRC respectively, Mr. AI Ali, learned counsel for the respondent no. 2 being the authorities under the Election Commission of

India, Mr. G Sarma, learned counsel for the respondents no. 3, 4, 7 and 8 being the authorities under the Home Department of Government of Assam, and Mr. P Sarma, learned Additional Senior Government Advocate for the respondent no. 6 being the Deputy Commissioner, Morigaon.

2. It is noticed that Case No. F.T.(C) 242/2016 (New Number) corresponding to F.T.(C) 1533/2012 (Old Number) before the Foreigners' Tribunal No. 5, Morigaon was proceeded against seven persons namely 1) Md. Jalimuddin S/O-Lt. Suraj Ali, 2) Musstt. Hazara Khatun (Wife), 3) Md. Haidar Ali, 4) Md. Wakin Ali, 5) Md. Jahirul, 6) Md. Imdadul and 7) Md. Anarul (Sons). We have also perused the verification report of the police authority which apparently was against Md. Jalimuddin S/O Lt. Suraj Ali of village Solmari P.S. Moirabari in the Morigaon district and the verification was only in respect of Md. Jalimuddin where Musstt Hazara Khatun is shown to the spouse and Md. Haidar Ali, Md. Wakin Ali, Md. Jahirul, Md. Imdadul and Md. Anarul to be the sons of Md. Jalimuddin. In the circumstance reference case was registered against all the seven as indicated.

3. The verification report containing that Musstt. Hazara Khatun is the wife, Md. Haidar Ali, Md. Wakin Ali, Md. Jahirul, Md. Imdadul and Md. Anarul are the sons of Jalimuddin are only a recording in the verification report without any further assertion that in fact the aforesaid persons are the sons of Jalimuddin. If the recording in the verification would be incorrect that Md. Haidar Ali is the son of Jalimuddin, any declaration in respect of Jalimuddin, if declared to be foreigner would adversely affect Haidar Ali and if declared to be a citizen would give an undue benefits without actual determination.

4. In the circumstance, it would be more advisable and prudent to register separate reference cases against all the aforesaid seven persons and give an

opportunity to them to discharge the burden to prove that they are citizens individually and thereafter, pass separate orders in the separate seven reference cases that may be registered. Accordingly, the matter stands remanded back to the Tribunal to register seven separate reference cases based on the verification and the reference made by the police and upon issuing notice, to proceed against them as per law. The proceedees would be at liberty to rely upon any material that they may desire to rely upon to discharge the burden to prove that they are not foreigner.

5. All the seven persons to appear before the Tribunal on 31.08.2023 and upon appearance, the Tribunal shall register seven separate cases and proceed against the proceedees as per law. In the event the petitioners do not appear before the Tribunal on the aforesaid date, the respondent authorities may proceed against them as per law.

6. The order dated 30.01.2018 of the Foreigners' Tribunal No. 5, Morigaon is accordingly set aside.

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

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE