

GAHC010086252023



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

Case No. : WP(C)/2233/2023

MD. ABDUL KADIR @ ABDUL KADIR ALI AND ANR
S/O- LATE ASON ALI MUNCHI,
R/O- VILL- KUYDOL,
P.S.- JAGIROAD,
DISTRICT- MORIGAON (ASSAM).

2: MD. NUR JAMAL
S/O- MD. ABDUL KADIR @ ABDUL KADIR ALI

R/O- VILL- KUYDOL

P.S.- JAGIROAD

DISTRICT- MORIGAON (ASSAM)

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
GOVT. OF INDIA, SHASTRI BHAWAN,
TILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

DEPARTMENT OF HOME AND POLITICAL

DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER OF MORIGAON
P.O. AND DISTRICT- MORIGAON

ASSAM
PIN- 782105.

4:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
P.O. AND DISTRICT- MORIGAON

ASSAM
PIN- 782105.

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1.

6:THE STATE CO-ORDINATOR OF NRC OF ASSAM
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. A R SIKDAR

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

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

ORDER

Date : 12.05.2023
(A.M. Bujor Barua, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioners and 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 Mr. J. Payeng, learned counsel for the respondents No. 2 and 4, being the authorities in the Home Department; Ms. U. Das, learned counsel for the respondent No. 3, being the Deputy Commissioner, Morigaon and Mr. A.I. Ali, learned counsel for the respondent No. 5, being the Election Commission of India.

2. The petitioners Md. Abdul Kadir and Md. Nur Jamal were referred to the Foreigners' Tribunal No. 1, Morigaon for rendering an opinion as to whether they are persons who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T.(C) Case No. 141/2007 was registered. Although the petitioners were served with notice and they had appeared before the Tribunal, but subsequently without any acceptable reason they had refrained themselves from appearing before the Tribunal. In the circumstance, the ex-parte order dated 07.01.2012 had been passed declaring them to be foreigners. The petitioners also instituted Misc. Case No. 30/2016 against the ex-parte order dated 07.01.2012 which was also dismissed by the order dated 26.09.2016. In the circumstance, the petitioner No. 1 is stated to be in detention at present and the petitioner No. 2 was taken into detention but later on was released.

3. Although we do not find any infirmity in the two orders dated 07.01.2012 and 26.09.2016 however for the interest of justice, we set aside the ex-parte order dated 07.01.2012 in F.T.(C) Case No. 141/2007 and grant another opportunity to the petitioners to discharge the burden under Section 9 of the Foreigners Act, 1946 to prove that they are Indian citizens or that they are not foreigners.

4. As the petitioners earlier did not appear before the Tribunal without showing any cause, a cost of Rs. 2,000/- each to be paid by the petitioners to the District Legal Services Authority, Morigaon and thereafter upon showing proof of payment of cost, the petitioners to appear before the Tribunal on 14.06.2023. As we have interfered with the ex-parte order dated 07.01.2012, the petitioner who was taken into custody and put up before the detention centre be also released forthwith.

Writ petition stands disposed of as indicated above.

JUDGE

JUDGE

Comparing Assistant