

GAHC010134682023



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

Case No. : WP(C)/3585/2023

ABUL KASHEM @ MD KASEM ALI
SON OF KALA MIYA SHEIKH,
RESIDENT OF VILLAGE- NIMUA,
POLICE STATION- BARPETA,
DISTRICT- BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
GOVERNMENT OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI- 781006.

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001.

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR

ACHYUT PLAZA

G.S. ROAD
BHANGAGARH

GUWAHATI
ASSAM
PIN- 781005.

5:THE DEPUTY COMMISSIONER
BARPETA
POST OFFICE- BARPETA

DISTRICT- BARPETA
ASSAM

PIN- 781301.

6:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
POST OFFICE- BARPETA

DISTRICT- BARPETA
ASSAM

PIN- 781301.

7:THE OFFICER-IN-CHARGE OF BARPETA POLICE STATION
POST OFFICE- BARPETA

DISTRICT- BARPETA
ASSAM

PIN- 781301

Advocate for the Petitioner : MS. D GHOSH

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

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

ORDER

21.06.2023

(AM Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, the Superintendent of Police (B) Barpeta as well as the Officer-in-Charge of Barpeta Police Station and Ms. K Phukan, learned counsel for the Deputy Commissioner Barpeta.

2. The petitioner Abul Kashem @ Md. Kasem Ali was referred to the Foreigners Tribunal (2nd Tribunal) Barpeta for rendering an opinion as to whether he is a foreigner within the meaning of Foreigners' Act, 1946 resulting in the registration of Case No.283/06 (F.T. 2nd) Barpeta. The Tribunal rendered an ex-parte opinion dated 12.05.2008 declaring the petitioner to be a foreigner.

3. The petitioner received notice from the Tribunal and initially appeared, but thereafter on the subsequent dates had refrained from appearing before the Tribunal on his own volition and without any acceptable cause which resulted in the ex-parte opinion dated 12.05.2008 in Case No.283/06 (F.T. 2nd) Barpeta by declaring the petitioner to be a foreigner.

4. Being aggrieved, this writ petition is instituted.

5. In the facts of the case, we do not find any infirmity in the ex-parte opinion dated 12.05.2008 in Case No.283/06 (F.T. 2nd) Barpeta, but, however, for the interest of justice, as the opinion is rendered ex-parte, we allow the petitioner another opportunity to appear before the Tribunal and present his case on merit. Accordingly, the ex-parte opinion dated 12.05.2008 in Case No.283/06 (F.T. 2nd) Barpeta is set aside and the matter is remanded back to the Foreigners Tribunal (2nd Tribunal) Barpeta for an adjudication on its own merit.

6. The petitioner to appear before the Tribunal on 26.07.2023.

7. It is stated that the petitioner is presently suffering from cancer and, therefore, a prayer is made that the cost to be paid by the petitioner for his earlier non-appearances before the Tribunal be reduced to some extent.

8. In view of the same, for the conduct of the petitioner in not appearing before the Tribunal without any acceptable reason, instead of paying a cost of Rs.5000/-, the petitioner to pay a cost of Rs.2000/- to be paid in the account of *Gauhati High Court Bar Association Welfare Fund* and the petitioner would be allowed to appear before the Tribunal on the aforesaid date only upon showing the proof of payment of the cost.

9. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant