

GAHC010137512023



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

Case No. : WP(C)/3683/2023

MD. SARIF AHMED AND ANR
SON OF MD. MASUKUDDIN,
RESIDENT OF MAMTI CHARIALI,
P.S. AMGURI IN THE DISTRICT OF SIVASAGAR, ASSAM
AND PERMANENT RESIDENT OF VILLAGE- CHARING PATHAR,
P.O.- CHARING, P.S.- MURAZAR,
IN THE DISTRICT OF HOJAI, ASSAM, PIN- 782439.

2: MD. MANIK AHMED
SON OF MD. MASUKUDDIN

RESIDENT OF MAMTI CHARIALI

P.S. AMGURI IN THE DISTRICT OF SIVASAGAR
ASSAM
AND PERMANENT RESIDENT OF VILLAGE- CHARING PATHAR

P.O.- CHARING
P.S.- MURAZAR

IN THE DISTRICT OF HOJAI
ASSAM
PIN- 782439

VERSUS

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

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

HOME DEPARTMENT
DISPUR

GUWAHATI- 781006.

3:THE ADDITIONAL DIRECTOR GENERAL OF POLICE (BORDER)
BHANGAGARH
GUWAHATI- 781005.

4:THE DEPUTY COMMISSIONER
SIVASAGAR
ASSAM
PIN- 785640.

5:THE SUPERINTENDENT OF POLICE (BORDER)
SIVASAGAR
ASSAM
PIN- 785640.

6:THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD

NEW DELHI- 110001.

7:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
1ST FLOOR
ACHYUT PLAZA

BHANGAGARH
GUWAHATI- 781005

Advocate for the Petitioner : MR. S S S RAHMAN

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 26.06.2023
(AM Bujor Barua, J)

Heard Mr. SSS Rahman, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 7 being the authorities under the Union of India and NRC respectively, Ms. A Verma, learned counsel for the respondents no. 2, 3 and 5 being the authorities under the Home Department of Government of Assam, Ms. U Das, learned counsel for the respondent no. 4 being the Deputy Commissioner, Sivsagar and Mr. AI Ali, learned counsel for the respondent no. 6 being the authorities under the Election Commission of India.

2. It is noticed that Md. Sarif Ahmed S/O Masukuddin resident of Mamti Chariali PS Amguri in the Sivsagar district and Md. Manik Ahmed also son of Masukuddin have filed this writ petition assailing the opinion dated 17.05.2023 rendered by the Foreigners' Tribunal Jorhat, in F.T. Case No. FT/SVR/31/2018 and FT/SVR/32/2018. Case No. F.T. SVR/32/2018 is registered against Manik Ahmed whereas FT/SVR/31/2018 is registered against Sarif Ahmed. As both of them claimed to be brothers they submitted common written statement before the Tribunal and as a result thereof the Tribunal also passed a common opinion dated 17.05.2023.

3. As the proceedings before the Foreigners Tribunal are individual proceedings against the respective proceedees, we are of the view that the procedure to be adopted would be to proceed separately against the two

proceedees and more so, when two separate reference cases have been registered against them. In view of the aforesaid technicality, the opinion dated 17.05.2023 is set aside and the matter stands remanded back to the Tribunal to pass individual opinion on the two references i.e. F.T. Case No. FT/SVR/32/2018 and FT/SVR/31/2018 by allowing the respective proceedees to file their individual written statement and also to produce relevant material that they may desire to produce.

4. As the opinion had been interfered on a technical reason we direct the two petitioners namely Md. Sarif Ahmed and Md. Manik Ahmed to appear before the Tribunal on 17.07.2023.

5. As the petitioners have not discharged their burden under Section 9 of the Foreigners' Act, 1946, to prove that they are not foreigners, we further provide that in the event the two petitioners shall not appear before the Tribunal on the aforesaid date, the Superintendent of Police (Border), Jorhat and Sivsagar conjointly to take the petitioners into custody and ensure their presence before the Tribunal.

6. No coercive action be taken against the petitioners till 17.07.2023 but in the event the two petitioners do not appear on the said date, the order requiring them to be taken into custody shall have its effect.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant