

GAHC010149112017



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

Case No. : WP(C)/7156/2017

MD. ALIM UDDIN
S/O- LATE ABDUL BARI, R/O- VILL- PASCHIM JAMUNAGAON, P.O-
KARAIGURI, P.S- MURAJHAR, DIST- HOJAI, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
OF HOJAI
DIST- HOJAI
ASSAM
PIN- 782435

4:THE SUPERINTENDENT OF POLICE
HOJAI
DIST- HOJAI
ASSAM
PIN- 782435

5:THE OFFICER-IN-CHARGE
MURAJHAR POLICE STATION
DIST- HOJAI
ASSAM

PIN- 78243

Advocate for the Petitioner : MRH I CHOUDHURY

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

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

ORDER

18.05.2023

(AM Bujor Barua, J)

Heard Mr. G Uddin, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as 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) Hojai as well as the Officer-in-Charge, Murajhar Police Station, Hojai, and Mr. PK Medhi, learned Government Advocate for the Deputy Commissioner, Hojai.

2. This writ petition is instituted on being aggrieved by the common order dated 30.10.2017 of the Foreigners Tribunal Nagaon 10th at Sankardev Nagar Hojai by which three references being F.T. (D) Case No.1666/2017 arising out of SP's FT Case No.111/2017 in respect of State Vs. Musstt. Tara Banu @ Teraban Nessa , FT(D) Case No.1662/2017 corresponding to SP's F.T.Case No.112/2017 in State Vs, Musstt. Hazira Begum and FT(D) Case No.1667/2017 corresponding

to SP's FT Case No.110/2017 in State Vs. Md. Alim Uddin had been rendered.

3. In this writ petition, the petitioner, namely, Md. Alim Uddin was referred to the Foreigners Tribunal Nagaon 10th at Sankardev Nagar Hojai for rendering an opinion as to whether he is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of F.T(D) Case No.1667/2017 corresponding to SP's F.T. Case No.110/2017 wherein a common order dated 30.10.2017 was rendered declaring the petitioner to be a person who had entered the State of Assam from the specified territory on or after 25.03.1971. Being aggrieved by the common order dated 30.10.2017, this writ petition has been instituted.

4. We have been told that the other proceedees out of the common order dated 30.10.2017 namely Musstt. Tara Banu @ Teraban Nessa and Musstt. Hazira Begum have also instituted their individual writ petitions against the common order dated 30.10.2017 in the aforesaid two references.

5. A reference is made to the Tribunal for rendering an opinion as to whether the proceedee had entered the State of Assam from the specified territory on or after 25.03.1971 or as to whether he/she is a foreigner. In such proceeding, the proceedee is required to discharge the burden under Section 9 of the Foreigners Act 1946 that he/she is not a foreigner. As the burden is an individual burden of the respective proceedee, we are of the view that the opinion to be rendered by the Tribunal would also have to be an individual opinion in respect of the individual proceedee, although, it can be stated that the proceedees may be

from the same family. If the proceedees are from the same family that would also require an individual conclusion to be arrived at that they are in fact from the same family. From such point of view, we set aside the common order dated 30.10.2017 passed in F.T(D) Case No.1667/2017 corresponding to SP's F.T. Case No.110/2017 in respect of the writ petitioner/proceedee Md. Alim Uddin and remand the matter back to the Tribunal to enable the Tribunal to render individual opinion on the said reference, instead of passing a common order.

6. Accordingly, the petitioner shall appear before the Tribunal on 30.06.2023. The petitioner may also produce all relevant material/document to establish his case, if so advised.

7. As considerable delay had occurred because of the aforesaid reason, the Tribunal is requested to render its opinion as early as possible preferably within three months of the appearance of the writ petitioner/proceedee.

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

9. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant