

GAHC010193372018



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

Case No. : WP(C)/6050/2018

ABDUL JABBAR
S/O. LATE AFSAR ALI, VILLAGE DAKHIN CHENIMARI, P.S. LAHARIGHAT,
DISTRICT- MORIGAON, ASSAM.

VERSUS

UNION OF INDIA AND 6 ORS.
THROUGH THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, NEW
DELHI.

2:THE STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-6.

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE DISTRICT ELECTION OFFICER
MORIGAON
ASSAM.

4:THE STATE CO-ODRINATOR
NRC
ACHYUT PLAZA
BHANGAGARH
GUWAHATI.

5:THE ADDL. DIRECTOR GENERAL OF POLICE (BORDER)

BHANGAGARH
GUWAHATI-5.

6:THE DEPUTY COMMISSIONER
MORIGAON
ASSAM.

7:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
ASSAM

Advocate for the Petitioner : MR. J SARMAH

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER
(ORAL)

09-01-2022

[N. Kotiswar Singh, JJ]

Heard Mr. J. Sarmah, learned counsel for the petitioner. Ms. L. Devi, learned counsel appearing on behalf of Mr. RK Dev Choudhury, learned Deputy SGI, for respondent no.1; Mr. G. Sarma, learned Special Counsel, F.T. for respondent no.5 & 7; Mr. A.I. Ali, learned Standing Counsel, ECI, for respondent no.3, Ms. L. Devi, learned Standing Counsel, NRC for respondent no.4 and Ms. U. Das, learned State Counsel, Assam, appearing for respondent nos.2 & 6.

2. Considering the nature of the case, which is based on the applicability of the principle

of *res judicata*, we are inclined to dispose of this petition at the motion stage itself.

3. The present petition has been filed by the petitioner, namely, Md. Abdul Jabbar, on being aggrieved by the impugned order dated 25.05.2018 passed by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.1443/2012 declaring the petitioner a foreigner of post 1971 stream who had entered in India (Assam) from the Specified Territory i.e. Bangladesh on or after 23.03.1971.

4. Learned counsel for the petitioner has taken a preliminary plea in assailing that the opinion dated 25.05.2018 passed by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.1443/2012 will not lie as the petitioner was already declared an Indian by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.862/2012 arising out of IM(D)T Case No.1233/04 vide its opinion dated 17.12.2016.

5. Learned counsel for the petitioner submits that as far as the applicability of *res judicata* in a proceeding before the Foreigners Tribunal is concerned, the same is settled that if a proceedee was already declared an Indian in a proceeding before the Foreigners Tribunal, unless the same is interfered by the competent forum, the same will be binding on subsequent proceeding against the same person in terms of the decision of the Hon'ble Supreme Court passed in *Abdul Kuddus vs. Union of India (2019) 6 SCC 604* and the decision rendered by this Court in *WP(C) No.2099/2018 (Sital Mandal vs. Union of India and Ors.)* on 28.04.2022 and other analogous matters and as such, if any such application is made by the applicant in the subsequent proceeding, the Tribunal is duty bound to examine the same to ascertain as to whether the proceedee is the same person who was proceeded earlier before the Tribunal and a favourable opinion was passed by the Tribunal declaring

him/her to be an Indian.

6. Now, the obvious question would be as to whether the petitioner who was declared a foreigner by the impugned order dated 25.05.2018 passed by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.1443/2012 is the same person who was proceeded in F.T. Case No.862/2012 before the Foreigners Tribunal No.2, Morigaon in which an opinion was rendered on 17.12.2016 declaring the proceedee therein as an Indian. If it is found that the present petitioner is the same person, who was proceeded in F.T. Case No. No.862/2012, the subsequent proceeding would not lie and accordingly, the decision in the subsequent proceeding also cannot be sustained in law.

7. In order to appreciate the submission advanced by the learned counsel for the petitioner, we have examined both the impugned orders i.e. the opinion dated 25.05.2018 passed by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.1443/2012 and the opinion dated 17.12.2016 passed by the Foreigners Tribunal No.2, Morigaon in F.T. Case No. No.862/2012.

8. In the earlier opinion rendered by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.862/2012 on 17.12.2016, the proceedee has been described as Md. Abdul Jabbar, a resident of Vill-Dakhin Senimari, P.S. Laharighat, Dist.-Morigaon, Assam and in the present proceeding i.e. F.T. Case No.1443/2012, the petitioner has been described as Md. Abdul Jabbar, S/o Late Afsar Ali, a resident of Vill-Dakhin Chenimari, P.S.-Laharighat, Dist.-Morigaon, Assam.

9. From the perusal of the above two descriptions of the proceedees respectively, there are striking similarities in the descriptions.

10. We have gone through the impugned opinion rendered in F.T. Case No.1443/2012 by the Foreigners Tribunal No.2, Morigaon and it appears that the Tribunal was aware of the fact that earlier vide opinion dated 17.12.2016 passed in F.T. Case No.862/2012 the petitioner was declared an Indian.

10. Accordingly, since we have found similarities in the name and description of the proceedees as mentioned above, we are of the view that this aspect should be examined by the Tribunal, more so, when the earlier opinion rendered by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.862/2012 on 17.12.2016 was brought to the notice of the same Tribunal in the second proceeding but the Tribunal did not consider the said aspect in the second proceeding at all on the ground that the Tribunal differs from the earlier view, which cannot be done once *res judicata* applies. It has been clearly mentioned in *Abdul Kuddus (supra)* that if there had been an order by the Foreigners Tribunal in favour of a person determining the citizenship, the said decision will be binding on subsequent proceedings against the same person and there cannot be another proceeding to re-determine the citizenship of the person, by applying the principle of *res judicata*.

11. Accordingly, this shall be the preliminary issue which is to be decided by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.1443/2012 as to whether the present proceedee is the same person who was earlier declared an Indian Citizen in FT Case No.862/2012 by the Foreigners Tribunal No.2, Morigaon and if it is found that the petitioner is the same person who was proceeded in FT Case No.862/2012 by the Foreigners Tribunal No.2, Morigaon, the present proceeding shall immediately be concluded in favour of the petitioner after considering the order passed in FT Case No.862/2012 on 17.12.2016 where the petitioner was declared an Indian citizen and in such an event, the impugned order dated 25.05.2018

passed in F.T. Case No.1443/2012 declaring the petitioner as a foreigner will be superseded by the subsequent order passed in term of this order.

Only when the Tribunal comes to a finding that the present proceedee is not the same person who was proceeded and was found to be an Indian in FT Case No.862/2012, the impugned order dated 25.05.2018 will stand and the order of the Tribunal can be challenged by the petitioner both on the issue of identity of the petitioner and other grounds raised in this petition.

12. In view of the above, without entering in the merit of the case, we remand the matter to the Foreigners Tribunal No.2, Morigaon, to examine whether the petitioner is the same person who was proceeded in FT Case No.862/2012 by the Foreigners Tribunal No.2, Morigaon.

We are also making it clear that we put on hold the order dated 25.05.2018 passed by the Foreigners Tribunal No.2, Morigaon in F.T. Case No.1443/2012 and the opinion dated 25.05.2018 shall not be given effect to till the concerned Foreigners Tribunal comes to the conclusion as to whether the present petitioner is the same person who was proceeded in F.T. No.862/2012 by the Foreigners Tribunal No.2, Morigaon because at this stage, it is yet to be ascertained by the Tribunal as to whether the present petitioner is the same person or not. It is made clear that if the Foreigners Tribunal comes to the conclusion that the petitioner is the same person, the opinion dated 25.05.2018 passed by the Foreigners Tribunal No.2, Morigaon will not be sustained and will stand set aside without any further order from this Court.

13. Accordingly, the petitioner shall appear before the Foreigners Tribunal on 14.02.2023 to prove as to whether he is the same person who was proceeded in F.T. No.862/2012 by the

Foreigners Tribunal No.2, Morigaon. If the Tribunal comes to the finding that the petitioner is not the same person who was proceeded in F.T. No.862/2012, the Tribunal shall give reason for coming to different conclusion for which the petitioner would be permitted to approach this Court again to challenge the order of the Tribunal as well as the order dated 25.05.2018 and take all the grounds which have been taken in the present petition.

14. It is made clear that since the nationality of the petitioner is already under cloud, he will remain on bail on furnishing a bail bond of Rs. 5,000/- (Rupees five thousand) with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Morigaon during the pendency of the proceeding before the Tribunal. The concerned Superintendent of Police (Border) shall also take steps for capturing the fingerprints and biometrics of the iris of the petitioner. The petitioner also shall not leave the jurisdiction of Morigaon district without furnishing the details of the place of destination and necessary information including contact number to the Superintendent of Police (Border), Morigaon.

15. With the above observations and directions, the writ petition stands disposed of.

16. Copy of this order be furnished to the Superintendent of Police (Border), Morigaon for doing the needful.

17. Let the LCR be remitted back forthwith to the concerned F.T.

JUDGE

JUDGE

Comparing Assistant