

GAHC010238482017



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

Case No. : WP(C)/4069/2017

ROFIQUR RAHMAN
S/O LATE ABDUL MATIN, R/O VILL-HARINADIC, PO-ANGLAR BAZAR, PS

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR, GUWAHATI-781006

3:THE DEPUTY COMMISSIONER
KAMRUP M ASSAM, PIN-781001

4:THE SUPERINTENDENT OF POLICE BORDER
DIST. KAMRUPM, ASSAM, PIN-78100

Advocate for the Petitioner : MR.S S S RAHMAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

31-08-2023

(L.S. Jamir, J)

Heard Mr. S.S.S. Rahman, learned counsel for the petitioner. Also heard Ms. L. Devi, learned Central Government Counsel, for the respondent No. 1; Mr. G. Sarma, learned standing counsel, Foreigners' Tribunal, appearing for respondent Nos. 2 and 4 as well as Mr. H.K. Hazarika, learned Government Advocate appearing on behalf of respondent No. 3.

The petitioner being aggrieved by the notice dated 30-03-2017, issued by the Foreigners' Tribunal No. 5, Kamrup (M), Guwahati, in connection with FT Case No. 342/2015, is before this Court on the ground that the FT Case No. 342/2015 is barred by the principle of *resjudicita* inasmuch as the petitioner has been proceeded against in an earlier case being FT Case No. 19/2017(N) before the Foreigners' Tribunal-III, Karimganj, where he has been declared as an Indian National.

It is the case of the petitioner that the Foreigners' Tribunal-III, Karimganj, in FT Case No. 19/2017(N), after examining all the exhibits and the witnesses had declared the petitioner as not a foreigner of any stream and he is an Indian National. Therefore, it is submitted that the second case, i.e., FT Case No. 342/2015, is barred by the principle of *resjudicita*.

We have perused the opinion dated 25-05-2017, given by the learned Member, Foreigners' Tribunal-III, Karimganj, in FT Case No. 19/2017(N). On perusal of

the same, we find that the Tribunal had proceeded only on the ground that the father of the petitioner, namely, Abdul Matin was a State Government employee in the office of the Executive Engineer, Public Health Engineering Division, Karimganj, from 01-03-1984 to 14-07-2011 and as the name of the father of the petitioner, namely, Abdul Matin, is enlisted in the 1966 and 1970 Voters' List and, therefore, Abdul Matin was an Indian citizen as per provision of the Indian Citizenship Act, 1955.

The learned Tribunal also examined the HSLC Examination Admit Card of the petitioner, which indicates that the father of the petitioner is Abdul Matin and also the passport wherein it is indicated that Abdul Matin is the father of the petitioner. Thereafter, the learned Tribunal gave the opinion that the petitioner is not a foreigner of any stream and he is an Indian National.

What we have noticed is that no proper finding has been given connecting the petitioner with the said Abdul Matin except with regard to the HSLC Examination Admit Card and the passport. We also find that the learned Tribunal came to the conclusion that as the father of the petitioner, Abdul Matin was a Government employee in the Public Health Engineering Division, Karimganj, from 01-03-1984 to 14-07-2011, the father of the petitioner is an Indian citizen.

No reason has been given in the said opinion dated 25-05-2017 connecting the linkage of the petitioner with his father as well as how the learned Tribunal came to a conclusion that the petitioner is not a foreigner, but an Indian National.

In that view of the matter, as there is no reasoning in the opinion dated 25-05-2017 in FT Case No. 19/2017(N), we are of the opinion that the notice dated 30-03-2017, issued by the Foreigners Tribunal No. 5, Kamrup (M), Guwahati is

not hit by the Principle of *resjudicita*. Accordingly, we direct the petitioner to appear before the learned Foreigners' Tribunal No. 5, Kamrup (M), Guwahati.

It is submitted that the petitioner is presently in Saudi Arabia for earning his means of livelihood and, therefore, sufficient time may be given to the petitioner to appear before the concerned Tribunal.

In that view of the matter, we direct the petitioner to appear before the Foreigners' Tribunal No. 5, Kamrup (M), Guwahati, on 30-10-2023.

The writ petition is disposed of.

The interim order passed earlier stands vacated.

Send down the LCR forthwith.

JUDGE

JUDGE

Comparing Assistant