

GAHC010250892022



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

Case No. : WP(C)/8079/2022

JAYED ALI @ MD. ZAIDER ALI @ MD. JAHED ALI
S/O- LT. KAYED ALI,
RESIDENT OF VILLAGE- DAKHIN SITALI,
P.S.- BAGHBOR, DISTRICT- BARPETA,
ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI-1.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION
INDIA

NEW DELHI- 01.

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

HOME DEPARTMENT
DISPUR

GUWAHATI-781006.

4:THE STATE CO-ORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI-5

PIN- 781005.

5:THE DEPUTY COMMISSIONER OF BARPETA DISTRICT
DISTRICT- BARPETA
ASSAM

PIN- 781

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
DISTRICT- BARPETA
ASSAM
PIN- 781308.

7:THE OFFICER-IN-CHARGE
BAGHBAR POLICE STATION
DISTRICT- BARPETA
ASSAM

PIN- 781308

Advocate for the Petitioner : MR. J AHMED

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 14.08.2023
(AM Bujor Barua, J)

Heard Ms. A Hussain, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 4 being the authorities under the Union of India and NRC respectively, Mr. AI Ali, learned counsel for the respondents no. 2 being the authorities under the Election Commission of India, Mr. G Sarma, learned counsel for the respondents no. 3, 6 and 7 being

the authorities under the Home Department of Government of Assam and Mr. P Sarma, learned Additional Senior Government Advocate for the respondent no. 5 being the Deputy Commissioner, Barpeta.

2. The petitioner Jahed Ali had been referred to the Foreigners' Tribunal No. 4, Barpeta for rendering an opinion as to whether he is a foreigner under the Foreigners' Act, 1946 resulting in registration of F.T. Case No. 928/2016. It is noticed that the Tribunal had rendered a common opinion dated 04.12.2020 in respect of another F.T. Case No. 503/2016 which was against Md. Zaider Ali. Md. Zaider Ali is shown to be the son of Kayed Ali of village Dakhin Sitali whereas Jahed Ali is also shown to be the son of Kayed Ali of village Dakhin Sitali. Although there may be a possibility that both the proceedees are sons of the same father, but when separate references are being made and for the purpose of proceeding in the Foreigners' Tribunal, it is always more prudent to pass separate opinion rather than going for a common opinion in respect of two references.

3. It is claimed that Md. Zaider Ali and Md. Jahed Ali are in fact one and the same person but by showing them to be named as different persons, two separate references have made. The Tribunal in paragraph 2 of its opinion dated 04.12.2020 had merely recorded that notices were issued to the proceedees namely Md. Zaider Ali and Md. Jahed Ali but in F.T. case No. 503/2016 Md. Zaider Ali appeared before the Tribunal and filed written statement as Jayed Ali denying the allegations. In F.T. Case No. 928/2016 Md. Jahed Ali appeared as Jahed Ali and filed a petition for amalgamation of the two case records. Accordingly, the Tribunal passed an order of amalgamation in F.T. Case No. 928/2016.

4. We clarify that if two reference cases have been instituted against the

same person although under two different names and the person concerned appears before the Tribunal and brings it to the notice that one of the reference is against the same person although in a different name. It would have been more prudent for the Tribunal to have closed one of the reference cases and proceeded against one which is actually issued in the name of the proceedee rather than seeking to amalgamate. Amalgamation would have the legal implication that the reference which was wrongly instituted in the name of a wrong person is also carried forward.

5. Accordingly the opinion dated 04.12.2020 rendered in respect of F.T. Case No. 503/2016 against the proceedee Zaider Ali is set aside.

6. As regards the opinion in respect of Md. Jahed Ali in F.T. Case No. 928/2016, reliance is placed on a voters' list of 1966 of village Dakhin Sitali Police Station Baghbar in the present Barpeta district which contains the names of Gendi Nessa W/O Bajju and that of Koyed Ali S/O Bajju at Sl. No. 101 and 103 respectively. It is claimed that Gendi Nessa is the grandfather and Koyed Ali is the father of the petitioner. The petitioner further relies on the voters' list of 1970 of village Dakhin Sitali which contains the names of Gendi Nessa W/O Bajju and that of Koyed Ali S/O Bajju at Sl. No. 122 and 124 respectively. Reliance is also placed on the voters' list of 1997 of village Dakhin Sitali which contains the names of Koyed Ali S/O Bajju and that of Baharjaan S/O Koyed at Sl. No. 178 and 179 respectively. The voters' list of 1985 of village Dakhin Sitali which contains the name of Kayed Ali S/O Bajju, Baharjan Nesa W/O Kayed along with Bakkar Ali and Omar Ali both sons of Kayed. Further reliance is placed on the voters' list of 2005 of village Dakhin Sitali which contains the name of Koyed Ali S/O Bajju Bepari at Sl. No. 209, Bharjaan W/O Koyed at Sl. No. 210, Haider Ali S/O Koyed at Sl. No. 211 and that of Zayed Ali S/O Koyed at Sl. No. 212 where

all are residing in the same house no. 64. Zayed Ali is shown to be 18 years whereas Haider Ali is shown to be 21 years and Koyed Ali is shown to be 78 years. It is claimed that Zayed Ali of voters' list of 2005 of village Dakhin Sital is the petitioner himself.

7. In view of the above, the matter stands remanded to the Tribunal to examine the voters' lists of 1966, 1970, 1985, 1997 and 2005 of village Dakhin Sitali and the petitioner to produce the complete and continuous voters' lists of all the aforesaid years before the Tribunal for its examination. The Tribunal upon its examination shall examine the consistency of the contents of the voters' lists and moreso, whether the names of all other sons of Koyed Ali also continuously appear in the voters' lists. The respondents in the Home Department to make their enquiry as to whether Zayed Ali of the 2005 voters' list of village Dakhin Sitali and the writ petitioner Jahed Ali are one and same person and thereafter, file a report. Upon doing the needful the Tribunal to pass a reasoned order.

8. The petitioner to appear before the Tribunal on 18.09.2023.

9. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE