

GAHC010274672018



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

Case No. : WP(C)/8575/2018

ATIKUL ISLAM @ ASSIQUUL ISLAM AND 6 ORS.
S/O LATE MAMUD ALI @ MAMAD ALI SK., R/O. VILLAGE- JORIBOR, P.O.
FALIHAMARI, P.S. BURAGAON, DIST- MORIGAON, PIN- 782121

2: MD. AIZUL HOQUE
S/O- ATIKUL ISLAM
R/O. VILLAGE- JORIBOR
P.O. FALIHAMARI
P.S. BURAGAON
DIST- MORIGAON
PIN- 782121

3: MD. IZAZUL HOQUE
S/O- ATIKUL ISLAM
R/O. VILLAGE- JORIBOR
P.O. FALIHAMARI
P.S. BURAGAON
DIST- MORIGAON
PIN- 782121

4: MUSTT. SHIRINA BEGUM @ SAIBINA
D/O- ATIKUL ISLAM
R/O. VILLAGE- JORIBOR
P.O. FALIHAMARI
P.S. BURAGAON
DIST- MORIGAON
PIN- 782121

5: MUSTT. SABIKUN NEHAR @ SABION
D/O- ATIKUL ISLAM
R/O. VILLAGE- JORIBOR
P.O. FALIHAMARI
P.S. BURAGAON
DIST- MORIGAON

PIN- 782121

6: MASUMA BEGUM
D/O- ATIKUL ISLAM
R/O. VILLAGE- JORIBOR
P.O. FALIHAMARI
P.S. BURAGAON
DIST- MORIGAON
PIN- 782121

7: YEHIA ISLAM @ YAHIA HANIF
R/O. VILLAGE- JORIBOR
P.O. FALIHAMARI
P.S. BURAGAON
DIST- MORIGAON
PIN- 78212

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN- 110001.

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
MORIGAON
DIST. MORIGAON
ASSAM
PIN- 782121

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001

5:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS
ASSAM
GUWAHATI- 781005.

6:THE SUPERINTENDENT OF POLICE (B)

MORIGAON
ASSAM.

7:THE OFFICER-IN-CHARGE
BHURAGAON POLICE STATION
DIST.- MORIGAON
PIN- 782121

Advocate for the Petitioner : MR H R A CHOUDHURY

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

23.05.2023

[Achintya Malla Bujor Barua, J.]

Heard Ms. H. Ahmed, learned counsel for the petitioners. Also heard Mr. K.K. Para, learned CGC, appearing for respondent No.1 as well as appearing for respondent No.5; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2, 6 and 7; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent No.4 and Ms. U. Das, learned Addl. Senior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner No.1 Atikul Islam had been referred to the Foreigners' Tribunal 2nd, Morigaon, for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of Case No.F.T. 65/2013. The Tribunal rendered an opinion dated 07.07.2018 declaring the petitioner No.1 to be a foreigner. Being aggrieved this writ petition is instituted.

3. In the writ proceeding before the Court, the petitioner No.1 relies upon the voters list of 1966 of village Jaribor Gaon, P.S.-Lahorighat in the Nagaon district, which contains the name of Mamud Ali, S/O Akin Ali at Sl.No.51. It is claimed that Mamud Ali of the 1966 voters list of village Jaribor Gaon is the father of the petitioner No.1. To establish that the petitioner No.1 Atikul Islam is the son of Mamud Ali of the 1966 voters list of village Jaribor Gaon,

reliance is placed on the Jamabandi in respect of a plot of land in village Jaribor Gaon. The Jamabandi contains the information that as per the order of the Assistant Settlement Officer dated 28.01.1981 the names of Usman and Atikul Rahman, amongst others, both son of Mamud Ali, had been mutated in place of Mamud Ali. Although the order of the Assistant Settlement Officer shows the two names Usman and Atikul Rahman but again the Jamabandi shows Usman to be Usman Ali S/O Mamud Ali and Atikul Rahman to be Atikul S/O Mamud Ali. The petitioner No.1 before the Court is Atikul Islam of village Jaribor.

4. Apart from the aforesaid variation in the depiction of the name as Atikul Islam and Atikul Rahman, it prima facie appears that the petitioner No.1 may have discharged the burden under Section 9 of the Foreigners Act, 1946 that he is a citizen of India.

5. In respect of the petitioners Nos.2 to 7, it is noticed that the enquiry as well as reference made by the Superintendent of Police (Border), Morigaon was only against a person namely Assiquil Islam. But there is neither any enquiry nor any reference against other six writ petitioners. In view of the above, the conclusion arrived in the impugned order dated 07.07.2018 against the petitioners Nos.2 to 7 are also set aside. As there is neither any enquiry nor any reference against the said six writ petitioners, liberty remains with the Superintendent of Police (Border), Morigaon, if so advised, to make separate references against the six writ petitioners, but the Tribunal shall not proceed against the writ petitioner Nos.2 to 7 without any separate references being made against each of them.

6. It is further noticed that the Superintendent of Police (Border), Morigaon by his memo dated 29.04.2013 had directed the Sub Inspector of Police (Border) Naba Kumar Bhuyan to start an enquiry under the Foreigners Tribunal (Amendment) Order, 1985 and submit a report with regard to Assiquil Islam, aged about 50 years, son of Mamad Ali of village Jaribargaon. The Sub Inspector of Police (Border), Bhuragaon police station Naba Kumar Bhuyan accordingly conducted an enquiry and submitted a report that during the enquiry, the suspect Md, Assiquil Islam could not produce any valid document. The Superintendent of Police (Border) accordingly by his order dated 29.04.2013 referred the matter to the Foreigners Tribunal for initiating a Proceeding under the Foreigners Tribunal Order, 1964 in respect of Md. Assiquil Islam son of Mamad Ali of village Jaribargaon in the Morigaon district.

7. Accordingly, F.T Case No. 65/2013 had been registered, where an opinion dated 07.07.2018 had been rendered declaring Md. Assiquil Islam to be a foreigner.

8. The Tribunal issued notice to Md. Assiquil Islam and others of village Jaribargaon, police station Bhuragaon in the Morigaon district and the notice was served on Md. Atikul Islam. Accordingly, Md. Atikul Islam appeared before the Tribunal, sought to discharge the burden under section 9 of the Foreigners Act, 1946 to prove that he is an Indian citizen. But, as notice was issued to Md. Assiquil Islam and it is Md. Atikul Islam, who appeared before the Tribunal, it would be reasonable to expect that Md. Atikul Islam will fail to prove his citizenship by means of documents in the name of Md. Assiquil Islam, whereas on the other hand, it is noticed that the enquiry, reference and the notice all are against Md. Assiquil Islam of village Jariborgaon leading to an inconsistency.

9. If the enquiry, reference and notice is against Md. Assiquil Islam, but in fact it was served on Md. Atikul Islam and it is Md. Atikul Islam who appeared before the Tribunal, we are of the view that there is also a requirement to return back the reference to the Superintendent of Police (Border) for resubmitting a correct reference as to whether the intention is to proceed against Md. Assiquil Islam of village Jaribargaon or the intention is to proceed against Md. Atikul Islam of village Jaribargaon. If the intention is to proceed against Md. Atikul Islam, appropriate corrections be made and the notice be issued to Md. Atikul Islam so that he can discharge the burden under Section 9 of the Foreigners Act, 1946 and if the intention is to proceed against Md. Assiquil Islam of village Jaribargaon, in such event, Md. Atikul Islam should be discharged from the proceeding and he be not disturbed any further and appropriate proceedings and notices be served to Md. Assiquil Islam of village Jaribargaon. As the matter has been remanded back, the aforesaid aspect be also taken note by the Tribunal and do the needful accordingly. If any corrected reference is made against Md. Atikul Islam and notice is also served upon Md. Atikul Islam, Md. Atikul Islam may also continue and take the proceeding further from the stage as indicated above when the matter has been remanded back.

10. For the purpose, the matter is remanded back to the Foreigners' Tribunal No.2, Morigaon to examine the voters list of 1966 of village Jaribor as well as the Jamabandi containing the information that the name of Atikul, S/O Mamud Ali had been mutated in place

of Mahmud Ali in respect of a plot of land at village Jaribor. The petitioner No.1 may also produce the complete order of the Assistant Settlement Officer dated 28.01.1981 by which the mutation orders were passed. The respondents in the Home Department may make their own verification, as may be advised and thereafter submit report thereof. Upon doing the needful, a reasoned order be passed in favour of the petitioner No.1, the same shall prevail over the earlier opinion dated 07.07.2018 and if it is against the petitioner No.1, consequential action shall follow.

11. The petitioner No.1 shall accordingly appear before the Tribunal on 06.07.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.
12. Send back the LCR immediately.
13. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant