

GAHC010136022019



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

Case No. : WP(C)/4088/2019

YUCHAR ALI @ MD. YUSUF ALI
S/O- LATE MUKTAR ALI, R/O- VILL NO.1, SONAJULI, P.S- PANERY, DIST-
UDALGURI, ASSAM, PIN- 784526

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 110001

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 110001

3:THE STATE OF ASSAM
REP. BY THE COMMISISONER TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

4:THE DEPUTY COMMISSIONER
DARRANG
PIN- 784125
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
DARRANG
PIN- 784125
ASSAM

6:THE DEPUTY COMMISSIONER

UDALGURI
PIN- 784509
ASSAM

7:THE SUPERINTENDENT OF POLICE (B)
UDALGURI
PIN- 784509
ASSAM

8:COORDINATOR
NRC
BHANGAGARH
GUWAHATI- 0

Advocate for the Petitioner : MR. S B RAHMAN

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

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

27.06.2024

(Suman Shyam, J)

Heard Mr. S. A. Barbhuiya, learned counsel appearing on behalf of the writ petitioner. We have also heard Mr. K. Gogoi, learned Central Government Counsel appearing for the respondent No.1, Mr. A. Ali, learned Standing Counsel, Election Commission of India appearing for the respondent No.2, Mr. J. Payeng, learned Standing Counsel, Home Department (F.T.), Govt. of Assam appearing for the respondent Nos.3, 5, 7 and 8 and Mr. P. Sharma, learned Govt. Advocate, Assam appearing for the respondent Nos.4 and 6.

2. This writ petition is directed against the ex-parte order dated 22.06.2007 passed by the learned Member, Foreigners Tribunal (2nd), Mangaldai in Case

No.F.T.(2)-537/06 declaring that the petitioner is a foreigner. In the impugned order dated 22.06.2007 the learned Tribunal has recorded that despite receipt of notice the writ petitioner/proceedee has failed to appear and produce evidence in support of his citizenship.

3. By referring to the impugned order dated 22.06.2007 Mr. Barbhuiya, learned counsel for the petitioner submits that it is correct that the petitioner had received notice issued by the learned Tribunal but in the said notice, the name of the proceedee was shown as "Md. Yuchar Ali" whereas, the name of the writ petitioner is "Md. Yusuf Ali". Since the petitioner's name was not shown in the notice sent by the learned Tribunal, the writ petitioner was advised to ignore the said notice and that is why the petitioner did not appear before the learned Tribunal. It is also the submission of Mr. Barbhuiya that in another proceeding being F.T. Case No.511`/2016, the learned Foreigners Tribunal at Udalguri had declared the brother of the petitioner, viz, Md. Kismat Ali to be an Indian national and therefore, the petitioner has a good case on merit as well. On such grounds, a prayer has been made to set aside the impugned ex-parte order dated 22.06.2007 and give an opportunity to the writ petitioner to adduce evidence before the learned Tribunal so as to establish his citizenship claim.

4. Opposing the said prayer, Mr. J. Payeng, learned Standing Counsel, Home Department (FT) has argued that even assuming that the name of the writ petitioner was wrongly reflected in the notice sent by the learned Tribunal, it was incumbent upon the petitioner to appear before the Foreigners Tribunal and point out the said defect in the notice, which the petitioner has failed to do in this case. As such, no relief can be granted to the petitioner in the facts and circumstances of the present case.

5. The learned departmental counsel appearing for the other respondents have also supported the contention advanced by Mr. Payeng.

6. We have considered the submissions made at the Bar and have also gone through the records (LCR). From the LCR we find that in the Local Verification Officer's (LVO) report, save and except mentioning that the petitioner is a suspected foreigner, nothing else has been disclosed. However, it has been shown that the mother tongue of the petitioner is Assamese and he claims to be an Indian citizen.

7. Be that as it may, the learned Tribunal has not recorded any reason based on which, the impugned opinion dated 22.06.2007, declaring the petitioner as a foreigner, had been arrived at. After a careful examination of the materials available before this Court, we are of the opinion that there is a considerable amount of doubt as to whether, notice was properly served upon the proceedee viz. Md. Yusuf Ali. Unless proper notice is served upon the proceedee, any declaration made against the proceedee pertaining to the question of citizenship, in our opinion, cannot be sustained in the eyes of law.

8. For the reasons stated herein above, we are of the view that the petitioner has succeeded in making out a good case warranting interference of this Court. We accordingly set aside the impugned ex-parte order dated 22.06.2007. The petitioner is granted four weeks time with effect from today to appear before the learned Foreigners Tribunal, Udalguri (erstwhile Mangaldai) and produce a certified copy of this order awaiting orders from the learned Tribunal. We, however, make it clear that if the petitioner fails to appear before the learned Tribunal within four weeks from today, this order shall stand automatically revoked and the impugned order dated 22.06.2007 shall stand

revived with all legal consequences.

Send back the LCR.

JUDGE

JUDGE

Comparing Assistant