

GAHC010149822024



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

Case No. : WP(C)/3796/2024

ON THE DEATH OF BABUR ALI HIS LEGAL HEIR JOYEN ALI AND 8 ORS
S/O- LATE BABUR ALI

2: JAYEDA KHATUN
D/O- LATE BABUR ALI

W/O- LATE INAM ALI

3: SAMSUL HOQUE
S/O- LATE BABUR ALI

4: ASHRAB ALI
S/O- LATE BABUR ALI

5: ATOWAR RAHMAN
S/O- LATE BABUR ALI

6: SANDESH ALI
S/O- LATE BABUR ALI

7: KUJRAT ALI
S/O- LATE BABUR ALI

8: PIARJAN AKHTARA
D/O- LATE BABUR ALI

W/O- MUZAMMEL HAQUE

9: ROFIQUL ISLAM
S/O- LATE BABUR ALI

ALL ARE R/O- VILLAGE- RUPAKUCHI

P.O AND P.S- BARPETA
DIST- BARPETA
ASSA

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SASTRI BHAWAN, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
P.O AND DIST- BARPETA
ASSAM
PIN-781301

4:THE SUPERINTENDENT OF POLICE (B)
P.O AND DIST- BARPETA
ASSAM
PIN-781301

5:THE ELECTION COMMISSION OF INDIA

NEW DELHI-110001

6:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
HOUSEFED COMPLEX
2ND FLOOR
BANPHOOL NAGAR
DISPUR
GUWAHATI-06
DIST- KAMRUP (M

Advocate for the Petitioner : MR. A R SIKDAR, MS M SARMA,MR. S I TALUKDAR

Advocate for the Respondent : DY.S.G.I., SC, ECI,SC, F.T,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 05.08.2024

(K.R. Surana, J)

Heard Mr. A.R. Sikdar, learned counsel for the petitioners. None appears on call for the respondent no.1 and 6; Mr. J. Payeng, learned standing counsel for the respondent nos.2 and 4; Mr. R. Talukdar, learned Govt. Advocate appearing for respondent no.3; and Mr. M. Kalita, learned counsel appearing on behalf of Ms. P. Barua, learned standing counsel for the respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have assailed the order dated 30.08.2023, passed by the learned Foreigners' Tribunal-1, Barpeta in FT Case No. 357/2016, arising out of FT Ref. Case No. 93/2016. By the said order, the directions contained in the order dated 14.06.2023, passed by the Coordinate Bench this Court in WP(C) 1392/2019 was not complied with and the opinion dated 20.12.2018 in the said proceedings of FT Case No. 357/2016 was ordered to stand as it is.

3. The father of the petitioners, namely, Late Babur Ali was the proceedee in the said FT Case No. 357/2016. By an opinion dated 20.12.2018, the Foreigner' Tribunal-1, Barpeta declared him to be a foreigner post 25.03.1971. Aggrieved by the said opinion, Babur Ali, then alive, had approached this Court to challenge the earlier opinion of the learned Foreigners'

Tribunal dated 20.12.2018, passed in FT Case No. 357/2016. From the order dated 14.06.2023, passed in WP(C) 1392/2019, it is seen that during the pendency of the writ petition, Babur Ali had expired on 31.01.2021 and accordingly, the present petitioners were allowed to be substituted on the death of Babur Ali as his legal heirs.

4. By order dated 14.06.2023, passed in WP(C) 1392/2019, this Court had made certain observations and directions. Paragraph 5 to 7 of the said order is quoted below:

“5. Two questions would remain firstly, whether the writ petitioner Babur Ali and the Babur Ali of the voters’ list of 1970 of village Rupakuchi are one and the same person and secondly, if the writ petitioner Babur Ali is in fact the Babur Ali of the voters’ list of 1970 of village Rupakuchi, whether it can also be construed that Babur Ail was a person who had entered the State of Assam from the specified territory on or before 01.01.1966. It is noticed that Rahmatali is the father of Babur Ali as per the voters’ list of 1970 of village Rupakuchi.

6. In view of the above, we remand the matter back to the Foreigners’ Tribunal No. 1, Barpeta to examine the aforesaid voters’ list of 1970 of village Rupakuchi containing the name of Babur Ali son of Rahmatali at Sl. No. 279. The petitioners may produce any voters’ lists prior to 1966 of village Rupakuchi which may contain the name of Rahmatali for examination of the Tribunal. The respondents in the Home Department through the Superintendent of Police (B), Barpeta may also make their own verification and thereafter submit a report before the Tribunal.

7. Upon doing the needful, the Tribunal to pass a reasoned order. If the reasoned order to be passed is in favour of the writ petitioner Babur Ali, the same shall prevail over the earlier opinion dated 20.12.2018 in F.T. Case No. 357/16 and if it is against the writ petitioner, consequences under law shall follow. The present petitioners to appear before the Tribunal on 18.07.2023. Till the reasoned order is passed, no coercive action be taken against the petitioners.”

5. On remand of the matter back to the Tribunal, the petitioners had produced the death certificate of the proceedee, namely, Late Babur Ali to show that he had expired on 31.01.2021. Accordingly, instead of complying with the

directions contained in the order dated 14.06.2023, passed in WP(C) 1392/2019, the learned Foreigners' Tribunal had held that the Tribunal cannot pass an order against the dead person and accordingly, it was ordered that the earlier opinion dated 20.12.2018, passed by the said learned Tribunal would stand as it is. It may be stated herein that the learned Foreigners' Tribunal had failed to take cognizance of the fact that the petitioners herein were substituted in WP(C) 1392/2019. It is reiterated herein that by the said previous opinion, the father and predecessor-in-interest of the petitioners, namely, Late Babur Ali was declared to be a foreigner who had entered into Assam after 25.03.1971.

6. In light of the said order dated 14.06.2023, the learned counsel for the petitioners has submitted that the order dated 30.08.2023, passed by the learned Foreigners' Tribunal was contemptuous. It is further submitted that as their father had been declared to be a foreigner, post 25.03.1971, if the previous opinion dated 20.12.2018 in FT Case No. 357/2016 is not revisited by the learned Tribunal in terms of order dated 14.06.2023, passed by this Court, the petitioners would suffer irreparable prejudice as their citizenship would become doubtful on the ground that they are the children of proceedee who has been declared to be a foreigner.

7. The learned standing counsel for the Home Department has defended the impugned opinion dated 30.08.2023. It is specifically submitted that if the State desires to proceed against the present petitioners, a reference has to be made before the Foreigners' Tribunal having jurisdiction.

8. Perused all the relevant materials on record. Considered the submissions made by both sides.

9. It is seen that upon an opinion formed by the competent authority that a particular person is suspected to be an illegal migrant and/or a foreigner who had illegally entered into the territory of India, a reference is made before the Foreigners' Tribunal having jurisdiction to give its opinion as to whether the proceedee is a foreigner who has entered into Assam on or after 01.01.1966 and before 25.03.1971 from the specified territory as defined in Section 6A(i)(c) of the Citizenship Act, 1955 or he has entered into the territory of India after 25.03.1971. Only after rendition of opinion by the Foreigners' Tribunal that the proceedee is a foreigner who had entered into Assam after 25.03.1971 from specified territory, the consequences upon the proceedee would follow.

10. This Court while passing the order dated 14.06.2023 in WP(C) 1392/2019, was conscious of the fact that the present petitioners were substituted in the said writ proceedings on the death of Babur Ali and while entertaining the challenge to the earlier opinion dated 20.08.2018 in FT Case No. 357/2016, had formulated two issues, morefully referred in paragraph 5 of the said order and the matter was remanded back to the Foreigners' Tribunal-1, Barpeta in terms of directions contained in paragraph 6 of the said order. Therefore, it was incumbent on part of the learned Foreigners' Tribunal -1, Barpeta to comply with the order dated 14.06.2023, passed in WP(C) 1392/2019. However, the said learned Tribunal had declined to do so by holding that the Tribunal cannot pass an order against a dead person.

11. In view of the contention of the learned State counsel that if the State desires to proceed against any of the petitioners under the Foreigners Act, 1946 and Rules framed thereunder, it would be incumbent to the State to make an enquiry and on satisfaction, the competent authority is required to make a

reference to the Foreigners' Tribunal having jurisdiction against those petitioners, who are suspected to be foreigners. Therefore, in such a proceeding, the petitioners would have an indefeasible right to produce materials in their respective defence.

12. Hence, instead of examining whether or not the order dated 30.08.2023, passed by the Foreigners' Tribunal-1, Barpeta is liable to be interfered with, the Court is of the considered opinion that ends of justice would be met by disposing of this writ petition at the motion stage by providing that if any proceedings is initiated against any of the nine petitioners herein, the opinion dated 20.12.2018, passed by the Foreigners' Tribunal-1, Barpeta in FT Case No. 357/2016, shall not prejudice the petitioners in taking such defence as they may be so advised and/or entitled to and the Foreigners' Tribunal having jurisdiction shall not dismiss and/or reject the defence plea of the petitioners herein only on the ground that the opinion dated 20.12.2018, passed by the Foreigners' Tribunal-1, Barpeta in FT Case No. 357/2016 has attained finality.

13. The aforesaid observation is made because the present petitioners had got themselves substituted in WP(C) 1392/2019 on the death of their father Late Babur Ali, by which their predecessor-in-interest had assailed the said opinion. However, the learned Foreigners' Tribunal as well as the Home Department of the State through the Superintendent of Police (B), Barpeta, without complying with the directions contained in the said order had held that the opinion dated 20.12.2018 would stand as it is. As a result, the directions contained in paragraph 5 to 7 of the said order dated 14.06.2023, passed in WP(C) 1392/2019 has remained unimplemented, which has prejudice to the petitioners.

14. With the observations and directions as indicated above, this writ petition stands closed at the motion stage without issuance of notice on the respondents.

JUDGE

JUDGE

Comparing Assistant