

GAHC010170792019



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

Case No. : WP(C)/5415/2019

RABINDRA PAUL AND ANR.
S/O- LT SURESH CHANDRA PAUL, R/O- ERA KAPILI (MALIJARI), P.O. AND
P.S. JAMUNAMUKH, DIST- HOJAI (ASSAM) PIN- 782428

2: KABINDRA PAUL
S/O- LT SURESH CHANDRA PAUL
R/O- ERA KAPILI (MALIJARI)
P.O. AND P.S. JAMUNAMUKH
DIST- HOJAI (ASSAM) PIN- 78242

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE COMM. AND SECY. TO THE MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-6

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHANGAGARH
GHY-5

5:THE ELECCTION COMMISSION OF ASSAM
REP. BY THE COMM.
BELTOLA BASISTHA ROAD
HOUSEFED COMPLEX
GHY-6
ASSAM

6:THE DY. COMMISSIONER
HOJAI
P.O. SANKARDEVNAGAR
DIST- HOJAI (ASSAM)
PIN- 782442

7:THE SUPERINTENDENT OF POLICE (B)
HOJAI
P.O. SANKARDEVNAGAR
DIST- HOJAI (ASSAM)
PIN- 78244

Advocate for the Petitioner : MR. D P BORAH

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

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

28-02-2024

(M.R.Pathak, J)

Heard Mr. D. P. Borah, learned counsel for the petitioners and Ms. A. Verma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 3 and 7. Also heard Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No.6.

2) While the Illegal Migrants (Determination by Tribunal) Act, 1983 was in force, in a proceeding against the petitioners, the learned I M (D) Tribunal, Hojai at Sankardev Nagar by its judgment and opinion dated 23.12.2002, passed in Case

No. IMDT/H/290/90, declared both the petitioners to be illegal migrants, who had illegally entered into the territory of Assam after 1971.

3) Dissatisfied with said judgment and opinion dated 23.12.2002 of the learned I M (D) Tribunal, the petitioners preferred an appeal before the Illegal Migrants (Determination) Appellate Tribunal at Guwahati as provided under the IM(D)T Act, 1983 being Misc. Case No. 35/2003. The said IM(D) Appellate Tribunal by an order dated 31.07.2003 dismissed the said Misc. Case No. 35/2003 preferred by the petitioners being time barred and thereby upheld the said judgment and opinion dated 23.12.2002 of the learned I M (D) Tribunal passed in Case No. IMDT/H/290/90.

4) Thereafter, the petitioners preferred a writ petition being WP(C) No. 7093/2003 against the orders dated 23.12.2002 passed by the learned IM(D) Tribunal in Case No. IMDT/H/290/90 as well as the order dated 31.07.2003, passed by the IM(D) Appellate Tribunal in said Misc. Case No. 35/2003, noted above.

5) The learned Single Judge after hearing the learned counsels for the parties by an order dated 11.11.2003 passed in said WP(C) No. 7093/2003 quashed both the orders, i.e., the judgment/opinion dated 23.12.2002 passed by the learned IM(D)T, Hojai at Sankardev Nagar in Case No. IMDT/H/290/90 as well as the order dated 31.07.2003, passed by the IM(D) Appellate Tribunal in said Misc. Case No. 35/2003, directing the said IM(D) Appellate Tribunal to hear the appeal, i.e., said Misc. Case No. 35/2003 of the petitioners on merit condoning the delay in preferring the said appeal, being Misc. Case No. 35/2003, with further observation that the petitioners shall not be deported till disposal of the said Appeal by the IM(D) Appellate Tribunal.

6) It is to be noted herein that by judgment and order dated 12.07.2005 passed in WP(C) No. 131/2000, the Hon'ble Supreme Court in the case of *Sarbananda*

Sonowal Vs. Union of India (1) reported in (2005) 5 SCC 665 struck down the Illegal Migrants (Determination by Tribunal) Act, 1983 declaring it to be illegal, wherein at paragraph 84 the Hon'ble Apex Court issued the following directions:--

- “(1) The provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 are declared to be ultra vires the Constitution of India and are struck down;*
- (2) The Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall cease to function;*
- (3) All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.*
- (4) It will be open to the authorities to initiate fresh proceedings under the Foreigners Act against all such persons whose cases were not referred to the Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.*
- (5) All appeals pending before the Appellate Tribunal shall be deemed to have abated.*
- (6) The respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of foreigners, who have illegally come from Bangladesh or are illegally residing in Assam.”*

7) The petitioners of said WP(C) No. 7093/2003 filed this writ petition on 23.07.2019 praying amongst others, for a direction to the Foreigners Tribunal, Hojai at Sankardev Nagar to take their matter for fresh adjudication in terms of the order of the Court dated 11.11.2003, passed earlier in said WP(C) No. 7093/2003.

8) Ms. A. Verma, learned Standing Counsel, Home Department, Assam on being enquired and on obtaining necessary written communication from the Foreigners Tribunal, Hojai submitted that after the order of the Court dated 11.11.2003, passed in said WP(C) No. 7093/2003 and during the force of said IM(D)T Act, 1983

and also thereafter, the petitioners did not approach the said IM(D) Appellate Tribunal at any point of time, nor the said Appellate Tribunal received the copy of the order dated 11.11.2003, passed in said WP(C) No. 7093/2003.

9) On being enquired, the Registry of this Court in its office note dated 26.02.2024 also informed that the said order dated 11.11.2003, passed in said WP(C) No. 7093/2003 was not communicated to the IM(D) Appellate Tribunal as well as IM(D) Tribunal.

10) Pursuant to the order of the Hon'ble Apex Court in the case of *Sarbananda Sonowal-1* (supra) and on striking down of the IM(D)T Act, 1983 and being notified by the Union of India in the Ministry of Home Affairs on 26.07.2005 that was published in the Gazette of India on 26.07.2005, the IM(D) Tribunals and IM(D) Appellate Tribunal constituted under the IM(D)T Act, 1983 ceased to function.

11) Thereafter, the State Government by its Notification dated 24.01.2006 constituted the respective Foreigners Tribunal under the Foreigners Act, 1946 and the cases that were pending for consideration before the IM(D) Tribunals as well as in the IM(D) Appellate Tribunals under the IM(D)T Act, 1983 were transferred to the concerned Foreigners Tribunals as constituted under the Act of 1946.

12) Considering the above, the Superintendent of Police (Border), Hojai is now directed to place/refer the matter of the present petitioners pertaining to Case No. IM(D)T/H/290/90 before the Foreigners Tribunal, Hojai at Sankardev Nagar, District Hojai forthwith for an appropriate opinion as to whether, the petitioners are foreigners under the Foreigners Act, 1946 or not.

13) The petitioners shall appear before the Foreigners Tribunal, Hojai at Sankardev Nagar **on or before 30.04.2024** along with a certified copy of this order. Since this order has been passed in presence of the counsel for the

petitioners, therefore, the Foreigners Tribunal, Hojai at Sankardev Nagar need not issue any fresh notice to the petitioners on their failure to appear before the said Tribunal on or before 30.04.2024 as directed above.

14) Registry shall forward a copy of this order to the Foreigners' Tribunal, Hojai at Sankardev Nagar as well as to the Superintendent of Police (Border), Hojai forthwith.

15) With the above observations and directions, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant