

GAHC010288232018



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

Case No. : WP(C)/86/2019

BABOR ALI AND 7 ORS.

S/O LATE TAMIZ ALI @ TAMIZUDDIN, R/O. VILL- PACHIM BORKHAL, P.O.
KILLING VALLEY, P.S. JAGIROAD, PIN- 782410, DIST. MORIGAON, ASSAM.

2: MUSSTT. REJIA KHATUN @ RASIA KHATOON

W/O. MD. BABOR ALI

D/O ABDUL AZIZ

R/O. VILL- PACHIM BORKHAL

P.O. KILLING VALLEY

P.S. JAGIROAD

PIN- 782410

DIST. MORIGAON

ASSAM.

3: MD. SABUR ALI @ SUBUR ALI

S/O MD. BABOR ALI

R/O. VILL- PACHIM BORKHAL

P.O. KILLING VALLEY

P.S. JAGIROAD

PIN- 782410

DIST. MORIGAON

ASSAM.

4: MD. FAZAR ALI @ FAZUR ALI

S/O MD. BABOR ALI

R/O. VILL- PACHIM BORKHAL

P.O. KILLING VALLEY

P.S. JAGIROAD

PIN- 782410

DIST. MORIGAON

ASSAM.

5: MUSSTT. MUNU BEGUM @ MANOWARA BEGUM

D/O MD. BABOR ALI

R/O. VILL- PACHIM BORKHAL
P.O. KILLING VALLEY
P.S. JAGIROAD
PIN- 782410
DIST. MORIGAON
ASSAM.

6: MUSSTT. MOMINA BEGUM
D/O MD. BABOR ALI
R/O. VILL- PACHIM BORKHAL
P.O. KILLING VALLEY
P.S. JAGIROAD
PIN- 782410
DIST. MORIGAON
ASSAM.

7: MUSSTT. RAHILA BEGUM
D/O MD. BABOR ALI
R/O. VILL- PACHIM BORKHAL
P.O. KILLING VALLEY
P.S. JAGIROAD
PIN- 782410
DIST. MORIGAON
ASSAM.

8: RAHIMA BEGUM @ KHATOON
REP. BY HER FATHER
MD. BABOR ALI. R/O. VILL- PACHIM BORKHAL
P.O. KILLING VALLEY
P.S. JAGIROAD
PIN- 782410
DIST. MORIGAON
ASSAM

VERSUS

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

2:THE CHIEF ELECTION COMMISSIONER
ELECTION COMMISSION OF INDIA
ASHOKA ROAD
NEW DELHI- 110001.

3:THE STATE OF ASSAM
REP. BY ITS SECRETARY
GOVT. OF ASSAM

HOME DEPTT.
DISPUR
GUWAHATI-6.

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 781007.

5:THE STATE COORDINATOR
OFFICE OF THE STATE COORDINATOR OF NATIONAL REGISTER OF
CITIZENS (NRC)
ASSAM
G.S. ROAD
BHANGAGARH
GUWAHATI- 781005.

6:THE DEPUTY COMMISSIONER
MORIGAON
DIST. MORIGAON
ASSAM
PIN- 782104.

7:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
DIST. MORIGAON
ASSAM
PIN- 78210

Advocate for the Petitioner : MR. K LAHKAR,

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,MR J PAYENG,SC, NRC,MS. A VERMA,SC,
ECI,MR. D BARUAH

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date: 22.01.2026

(A.M. Kalita, J)

Heard Mr. K. Lahkar, learned counsel for the petitioners. Also heard Ms. R. Devi,

learned CGC, Mr. A. I. Ali, learned Standing Counsel for the ECI; Mr. G. Sarma, learned Standing Counsel FT & Border matters and Mr. P. Sarma, learned Addl. Senior Government Advocate, Assam.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have assailed the impugned opinion dated 18.05.2018, passed by the learned Foreigners' Tribunal No. 1st, Morigaon, Assam in FT (C) Case No. 849/2006, whereby, the petitioners, namely, 1. Md. Babar Ali, 2. Mustt. Rasia Khatoon @ Rejia Khatun, 3. Md. Sabur Ali @ Subur Ali, 4. Md. Fazar Ali @ Fazur Ali, 5. Munu @ Munu Begum @ Manowara Begum, 6. Momina @ Momina Begum, 7. Rohila @ Rahila Begum and 8. Rahima @ Rahima Khatoon @ Begum were declared as foreigners/illegal immigrants, who had entered India (Assam) after 25.03.1971.

3. The learned counsel for the petitioners submits that the learned Foreigners' Tribunal (In short, FT) has committed grave error in declaring the petitioners as foreigners without taking into account the materials brought on record by way of evidence before the learned FT. The learned counsel submits that though as many as 25 nos. of Exhibits were brought on record by the petitioners, the learned FT has not discussed all the Exhibits, but only discussed few of them. Therefore, the learned counsel submits that non-consideration of the relevant Exhibits makes the whole opinion incorrect and therefore, the same is liable to be set aside on that ground alone. The learned counsel appearing for the petitioners submits that though the enquiry and the subsequent reference was only against the petitioner no. 1 i.e., Md. Babar Ali, however, the learned FT without taking into consideration the aforesaid aspect and settled law, has declared the other members i.e., the petitioner nos. 2 to 8 also as Foreigners, which is non-permissible under the law. Therefore, he submits that the opinion rendered by the learned FT should be set aside and quashed and consequently, the petitioner nos. 2 to 8 should be declared as Non-Foreigners.

4. This Court has gone through the records of the learned FT, Morigaon, Assam

relating to the case and has found that the enquiry was made only against the petitioner no. 1 i.e., Md. Babar Ali and consequently, the reference of the Superintendent of Police (B), Morigaon, Assam dated 12.09.2002 also reflects the reference to the Illegal Migrant (Determination) Tribunal was made only against the petitioner no. 1, Md. Babar Ali.

5. The law in this respect has already been settled by this Court in the cases of **Aktara Khatun Vs. State of Assam and Ors.**, reported in **2017 (2) GLT 974** and **Sudhir Roy and Ors., vs. Union of India and Ors.**, reported in **2019 (1) GLT 353**, wherein, this Court has held that though the presumption can be drawn against the family members of the Proceedee, who has been declared as Foreigner but at the same time, such presumption would by itself not lead to a conclusion that the family members of a Proceedee, who have been declared to be Foreigners, are also Foreigners. In this connection, Paragraph-23 of the case of *Aktara Khatun (supra)* being relevant is reproduced herein below: -

“23. Under the scheme of Foreigners' Act, 1946, read with the Foreigners' (Tribunal) Order, 1964, a reference may be made by the concerned Superintendent of Police to the duly constituted Foreigners' Tribunal, if there is suspicion that the concerned person is a foreigner. Once the reference is made, the competent Foreigners' Tribunal is required to render its opinion on the reference by answering it either in favour of the State or in favour of the proceedee. If the reference is answered in favour of the State, it would lead to the declaration that the proceedee is a foreigner. On the other hand, if the reference is answered in favour of the proceedee, it would mean that the proceedee is not a foreigner. The Tribunal gets the jurisdiction to opine as above only when a reference is made by the Superintendent of Police. Therefore, to our mind, directing the Superintendent of Police (Border) to cause enquiry regarding the citizenship status of certain persons by the Foreigners' Tribunal may not be justified. Instead of issuing direction, the concerned Foreigners' Tribunal may bring this aspect of the matter to the notice of the referral authority, i.e., the Superintendent of Police (Border) for doing the needful either by making observation in the order itself or taking up the issue in the periodic meetings held between Members of Foreigners'

Tribunal, Superintendent of Police and Deputy Commissioner.”

6. What is discernible from the aforesaid paragraph is that the learned FT gets a jurisdiction to opine only when a reference against a proceedee is made to it by the jurisdictional Superintendent of Police, not otherwise. In the instant case, it is found from the records that the reference was made only against the petitioner no. 1 i.e., Md. Babar Ali by the Superintendent of Police (B), Morigaon, Assam, vide his reference dated 12.09.2002.

7. In this connection, the reference to paragraph-9 of the aforesaid case of **Sudhir Roy (supra)** can also be made. Being relevant, Paragraph-9 of the aforesaid case is quoted herein below: -

“9. As regards the declaration of the wife, sons and daughters of the petitioner to be foreigners, we have perused the records and have taken note of that the reference was made only against the petitioner and not against his wife, sons and daughters. Although the law in this respect has been settled by this Court in Aktara Khatun Vs. State of Assam & Ors., reported in 2017(2) GLT 974 that a presumption can also be drawn against the family members of the proceedee who has been declared as foreigner, but at the same time we are also of the view that such presumption would by itself not lead to a conclusion that the family members of a proceedee who has been declared to be a foreigner are also foreigners. The same may be a good cause for initiating an enquiry and making a reference against the family members, but without following the due procedure of law of conducting an enquiry and making a reference and being adjudicated by the Tribunal, the family members cannot be declared to be foreigners.”

8. In view of the aforesaid settled laws as laid down by this Court in the aforementioned two cases, this Court is of the considered opinion that the declaration of petitioner nos. 2 to 8 as Foreigners by the learned Foreigners’ Tribunal No. 1st Morigaon, Assam, vide it’s opinion dated 18.05.2018, is not as per law and therefore, part of the order whereby, the petitioner nos. 2 to 8 were declared Foreigners is liable to

be set aside and accordingly, the same is set aside.

9. Now, coming back to the issue regarding the petitioner no. 1, to prove his citizenship, the petitioner no. 1 has submitted the voter lists of the year 1975, 1989, 2005 and 2008 along with the Gaon Burha' Certificate (Exhibit K-1) as well as some other documents. It is seen from the opinion that the learned FT, Morigaon, Assam rejected the aforesaid voter lists on the ground that the voter lists were not proved by way of the primary evidence of the lawful custodian of the electoral roll. Thus held that the contents of the voter lists were not proved.

10. This Court has gone through the records of the FT(C) Case No. 849/2006 produced before this Court and found that the aforesaid voter lists submitted before the Tribunal are certified copies of the voter lists duly certified by the concerned authorities. Therefore, it is the considered opinion of this Court that certified copies of the voter lists, in originals, cannot be rejected on the ground of the same being not proved with primary evidence of the lawful custodian of the electoral roll. More so, the authenticities of the voter lists were not doubted by the State during the proceeding before the learned FT, Morigaon, Assam.

11. In view of the aforesaid, the instant case is remanded back to the learned FT, Morigaon, Assam, for a fresh opinion as regards the petitioner no. 1 after consideration of the aforesaid voter lists of the year 1975, 1989, 2005 and 2008. However, it is made clear that no further evidence shall be allowed to produce before the learned FT, Morigaon, Assam, by the proceedee in the instant case.

12. It is also made clear that the jurisdictional Superintendent of Police (B), Morigaon, Assam shall be at liberty to cause enquiry in respect of the petitioner no. 2 to 8 and thereafter, to make a reference to the competent Foreigners' Tribunal against them, if so advised. In view of the above, the proceedings shall now be initiated only against the petitioner no. 1, Mr. Babar Ali.

13. Accordingly, the instant writ petition stands allowed to the extent indicated herein above.

JUDGE

JUDGE

Comparing Assistant