

GAHC010043492018



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

Case No. : WP(C)/1359/2018

JAMAL UDDIN AHMED
VILL-RAYPUR, PS-BARPETA ROAD, DIST-BARPETA, ASSAM, PIN-781313

VERSUS

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

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

3:THE DEPUTY COMMISSIONER
BARPETA
ASSAM
PIN-781301

4:THE OFFICER-IN-CHARGE
KALGACHIA POLICE STATION
DIST-BARPETA
ASSAM
PIN-781319

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI

6:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)

ASSA

Advocate for the Petitioner : MR. S AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE N. KOTISWAR SINGH

HON'BLE MRS. JUSTICE MALASRI NANDI

ORDER

(ORAL)

31-01-2022

[N. Kotiswar Singh, J]

Heard Mr. S. Ahmed, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Asstt. SGI, for respondent nos.1 & 7; Mr. J. Payeng, learned Special Standing Counsel, F.T. appearing for respondent no.4 & 5; Mr. A.I. Ali, learned Standing Counsel, ECI, appearing for respondent no.6 and Ms. U. Das, learned Government Advocate, Assam, appearing for respondent nos.2 & 3.

2. In this petition the petitioner submits that the impugned order dated 14.02.2017 passed by the Foreigners Tribunal 9th, Barpeta, Assam in F.T. 9th Case No.101/2017 [Ref. IM(D)T Case No.2364/2001] cannot be sustained for the simple reason that it was the petitioner's wife, namely, Musstt. Manjuara Begum, whose nationality was doubted, thereafter, inquiry was conducted and accordingly, the reference was made to the Tribunal. Though, in course of inquiry the name of the petitioner being husband of the said Musstt.

Manjuara Begum was referred to, but no inquiry was made against him and accordingly, the reference was made only against his wife and not against him. However, the Tribunal proceeded not only against Musstt. Manjuara Begum, the petitioner's wife but also against him, which according to the petitioner is not permissible.

3. The LCR, as called for, has been received and we have perused the same.
4. In course of inquiry, a reference was made to the name of the petitioner being the husband of the aforesaid Musstt. Manjuara Begum and an observation was made that the said Musstt. Manjuara Begum along with her family members are illegal immigrants. However, on perusal of the records it appears that the inquiry was only against Musstt. Manjuara Begum. Thus, no inquiry was held against the present petitioner.
5. It is now well settled, as not disputed by the State, that a reference can be made only after a proper inquiry is made against the person whose nationality is doubted.
6. It has been held by this Court in a number of cases including in *Santosh Das vs. Union of India* reported in 2017 (2) GLT 1065) being WP(C) No.7551/2016, Sona Kha @ Sona Khan vs. Union Of India and Ors, decided on 24.03.2021 in WP(C) no.1293/2021 etc., that a Tribunal get the jurisdiction to proceed against a person only when a proper reference is made against the inquiry made by the Inquiring Authority.
7. On this ground only, we are inclined to allow this petition by setting aside the impugned order dated 14.02.2017 passed by the Foreigners Tribunal 9th, Barpeta, Assam in F.T. 9th Case No.101/2017 [Ref. IM(D)T Case No.2364/2001] in respect of the petitioner is concerned.

8. In this connection, it may be also noted that the said Tribunal has given a finding that his wife Musstt. Manjuara Begum against whom the reference was made is not a foreigner, whereas the petitioner, against whom no reference was made, the Tribunal declared him as a foreigner. For the reasons referred to above, we do not think that the Tribunal could have proceeded against the petitioner when no reference was made against the petitioner. The petitioner could not have been proceeded as a matter of routine by the Tribunal merely because he happened to be the husband of Musstt. Manjuara Begum against whom the reference was made.

9. Accordingly, we are inclined to allow this petition by setting aside the impugned order dated 14.02.2017 passed by the Foreigners Tribunal 9th, Barpeta, Assam in F.T. 9th Case No.101/2017 [Ref. IM(D)T Case No.2364/2001] as far as the present petitioner is concerned.

10. LCR be remitted to the concerned Foreigners Tribunal immediately.

JUDGE

JUDGE

Comparing Assistant