

GAHC010268802022



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

Case No. : WP(C)/251/2023

RAFIKUL ISLAM

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA THE MINISTRY OF
HOME AFFAIRS GRIHA MANTRALAYA NEW DELHI

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM HOME DEPTT.
DISPUR GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
REP BY THE CHIEF ELECTION COMMISSIOER OF INDIA NIRVACHAN
SADAN ASHOKA ROAD NEW DELHI-110001

4:THE STATE CO ORDINATOR
NRC ASSAM BHANGAGARH GUWAHATI-781005

5:THE DEPUTY COMMISSIONER
SONITPUR
P.O TEZPUR DIST SONITPUR ASSAM PIN-784001

6:THE SUPERINTENDENT OF POLICE (BORDER) SONITPUR
P.O. TEZPUR DIST. SOINTPUR ASSAM PIN-78400

Advocate for the Petitioner : MD A RAHMAN

Advocate for the Respondent : D.Y.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

Date : 03-03-2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Md. I Hussain, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as the authorities under the NRC, Mr. T Pegu, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Sonitpur, Tezpur and Ms. U Das, learned Government Advocate for the Deputy Commissioner, Sonitpur.

2. The petitioner Rafikul Islam was referred to the Foreigners Tribunal (Second) Tezpur for rendering an opinion as to whether he is a person who had entered the State of Assam subsequent to 25.03.1971 from the specified territory. Consequent thereof, F.T.Case No.05/2019 corresponding to S.P.Case No.731/2008 was registered against the petitioner.

3. By the order dated 08.09.2022 of the Foreigners Tribunal (Second) Sonitpur, an opinion was rendered that the petitioner is a person who had entered the State of Assam from the specified territory subsequent to

25.03.1971.

4. Being aggrieved by the order dated 08.09.2022 of the Foreigners Tribunal (Second) Sonitpur in F.T.Case No.05/2019 corresponding to S.P.Case No.731/2008, this writ petition has been instituted. One of the grounds taken in the writ petition is that there was an earlier round of proceeding against the petitioner in the same Foreigners Tribunal in F.T. Case No.102/2014 and in the said proceeding, an opinion dated 29.12.2014 had already been rendered declaring the petitioner to be not a foreigner. Accordingly, the petitioner has raised the ground of *res judicata* to assail the subsequent proceeding initiated against him in F.T. Case No.05/2019.

5. We have perused the opinion rendered by the Foreigners Tribunal (Second) Sonitpur in F.T. Case No.102/2014 and it is noticed that the Tribunal apart from recording that the evidence had been rendered by the proceedee had not given any reason as to why the Tribunal was of the view that the petitioner is not a foreigner. An unreasoned order is unacceptable in law, more so, when the said order is relied upon in a subsequent proceeding to take the plea of the subsequent proceeding being barred by the principles of *res judicata*.

6. The principles of *res judicata* under the law requires two conditions precedent to be satisfied i.e., the earlier dispute must be between the same parties and secondly, the issue between the parties must be decided. The very condition that the issue must be decided requires that it must be decided by a reasoned order and not by an order merely depicting the view that the

Foreigners Tribunal may have taken without any reason. From such point of view, we are unable to accept the plea of the petitioner that the subsequent proceeding against the petitioner in F.T.Case No.05/2019 corresponding to S.P.Case No.731/2008 is barred by the principles of res judicata.

7. But, however, for the interest of justice, we remand the matter back to the Foreigners Tribunal (Second) Sonitpur to take up the records of F.T. Case No.102/2014 as well as F.T.Case No.05/2019 and pass a reasoned order on the materials that may be available in the two proceedings.

8. Although there is an in-between proceeding against the petitioner, the same is ignored for the time being as the matter is of no relevance for the purpose of this proceeding.

9. It is made clear that the principles of res judicata being not applicable in the present case for the reasons mentioned above, a possible view could have been taken to ignore the earlier F.T. Case No.102/2014 and decide the matter on merits as per the materials available in F.T.Case No.05/2019. But for the benefit of the writ petitioner/proceedee *inasmuch as*, the earlier unreasoned opinion was in his favour and there is a possibility that there may be materials on record in the earlier F.T.Case No.102/2014 in favour of the petitioner, we are passing the present order that the materials of both the proceedings may be taken note of in passing the reasoned order as indicated above.

10. Accordingly, the petitioner to appear before the Tribunal on 06.04.2023.

11. Till the reasoned order is passed, no coercive action be taken against the petitioner.

12. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant