

(2019) 03 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (C) No. 7415, 7419 Of 2018

Fakaruddin

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0017

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : U Dutta

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. U Dutta, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. A Kalita, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police(Border), Morigaon, an IM(D)T case was registered against the petitioner. Upon the IM(D)T Act of 1983 being declared ultra vires, the reference was transferred to the Foreigners Tribunal No.3, Morigaon and was re-numbered as FT (C) Case No.252 of 2015.

3. By the order dated 28.08.2018, the Tribunal had declared the petitioner to be a foreigner who entered the State of Assam subsequent to 25.03.1971. Being aggrieved, the present writ petition is preferred.

4. Amongst others, one of the ground taken in this writ petition is that the reference made by the Superintendent of Police (Border), Morigaon, which resulted in registration of FT (C) Case No. 252 of 2015 was made only against Musstt. Sahera Begum, wife of Samsuddin of village Dakhin Kalikajari and no

reference was made against the present petitioner.

5. In order to appreciate the contention, we have verified the records of the Tribunal and examined the reference made by the Superintendent of Police (Border) Morigaon. The reference dated 23.07.2002 of the Superintendent of Police (Border), Morigaon, Assam is made only against Musstt. Sahera Begum and the reference does not indicate any other person against whom the reference may have been made.

6. The law in this respect has been settled in the case of Sudhir Kumar Roy & 5 ors - vs- Union of India & 5 Ors in WP (C) No.6790 of 2018, wherein it has been held that if a person is declared to be a foreigner, it may be a good case for the authorities to refer his or her other family members for a reference before the Tribunal. But the fact that one of the family member had been declared to be a foreigner by itself would not be sufficient to declare the other family members also to be foreigners without any such reference being made.

7. Stand has been taken by the State authorities that the petitioner Md. Fakaruddin is also the family member of Musstt. Sahera Begum, wife of Samsuddin, inasmuch, as the petitioner is the son of Samsuddin. But as already held, the same by itself cannot be a reason for the Tribunal to also declare the petitioner to be a foreigner who entered the State of Assam after 25.03.1971, merely because Musstt. Sahera Begum, wife of Samsuddin had been so declared. At the same time, without there being a reference, no jurisdiction is vested on the Tribunal to form an opinion as regards the citizenship of the present petitioner.

8. Accordingly, the order dated 28.08.2018 in FT (C) Case No.252 of 2015 in the Foreigners Tribunal No.3, Morigaon declaring the petitioner to be a foreigner who entered Assam after 25.03.1971 is hereby set aside without interfering with the other provisions of the said order, in this case.

9. As the declaration of the petitioner to be a foreigner who entered Assam after 25.03.1971 had been interfered on technical ground, it shall not be a bar on the part of the Superintendent of Police (Border) Morigaon to make a reference against him before the Tribunal, if so advised under the law.

10. The writ petition stands allowed to the extent indicated above.