
(2019) 02 GAU CK 0056
In the Gauhati High Court
Case No : Writ Petition (C) No. 855 Of 2019

Harun Ali And Anr

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0056

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

Bench : Division Bench

Advocate : D Ghosh

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Ms. D. Ghosh, learned counsel for the petitioners, Mr. A Ali, learned counsel for the Election Commission of India, Mr. J. Payeng, learned standing counsel for the State of Assam appearing for the Foreigners Tribunal and Border Affairs, Ms. U. Das, learned standing counsel for the authorities under the NRC 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, IM(D)T Case No.25/2003 was registered against one Md. Rafik Ali and others. Upon the IM(D)T Act of 1983 being declared ultra-vires, the reference was transferred to the Foreigners Tribunal No.1, Morigaon and was re-numbered as FT(C) No.532/2010.

3. The Tribunal by its order of 18.09.2018 had declared the aforementioned Md. Rafik Ali as well as the petitioner No.1 Harun Ali, son of Rafik Ali and petitioner No.2 Jalemon Begum, wife of Rafik Ali also to be foreigners.

4. Ms. D Ghosh, learned counsel for the petitioners has referred to the annexure which comprises of the reference made by the Superintendent of Police (Border), Morigaon as well as the enquiry report, which shows that only Md. Rafik Ali was

referred by the Superintendent of Police (Border), Morigaon.

5. The law in this respect has been settled in *Sudhir Kumar Roy -vs- Union of India and others*, wherein it has been held that if a given person is declared to be foreigner, his other family members cannot be so declared. If a given person is declared to be a foreigner, the same may be a basis for the authorities to make a reference against the other family members, but without such reference being made, they cannot be declared to be foreigners.

6. In view of the above, the declaration of the petitioner Nos. 1 and 2 also to be foreigners as because the reference was made against Mr. Rafik Ali is found to be unsustainable. Accordingly, the order dated 18.09.2018 of the Foreigners Tribunal No.1, Morigaon in Reference Case No.FT(C) 532/2010 in respect of the petitioner Nos. 1 and 2 is set aside. It is further provided that in the event, the Superintendent of Police (Border), Morigaon is of the view that a reference is also required to be made against the petitioner Nos. 1 and 2, interference of the order of the Tribunal shall not be a bar on the part of the Superintendent of Police to refer them, if so advised.

7. From the order of the Tribunal itself, it is discernible that Mr. Rafik Ali had died before the opinion could be rendered by the Tribunal. It being so, the reference made against Md. Rafik Ali stood abated and there cannot be any opinion against a dead person, neither declaring him to be a foreigner nor declaring him to be an Indian citizen.

The writ petition stands allowed to the extent indicated above.