

**(2023) 03 GAU CK 0047**

**In the Gauhati High Court**

**Case No : Writ Petition (Civil) No. 1248 Of 2023**

Md. Amir Ali @ Amir Uddin

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

**Date of Decision : 27-03-2023**

**Acts Referred:**

Indian Citizenship Act, 1955 — Section 3

**Citation : (2023) 03 GAU CK 0047**

**Hon'ble Judges : Achintya Malla Bujor Barua, J; Robin Phukan, J**

**Bench : Division Bench**

**Advocate : I A Talukdar**

**Final Decision : Allowed**

## Judgement

A.M. Bujor Barua, J

1. Heard Mr. IA Talukdar, learned counsel for the petitioner. Also heard Ms. B Sarma, learned CGC appearing on behalf of respondents in the Union of India, Mr. G Sarma learned counsel for the State respondents in the Home Department of Government of Assam, Ms. L Devi, learned counsel for the respondents in the NRC, Mr. T Pegu, learned counsel for the Election Commission of India and Ms. K Phukan, learned counsel for the Deputy Commissioner, Morigaon.

2. The petitioner Md. Amir Ali @ Amir Uddin had been referred to the Foreigners Tribunal, No. 4, Morigaon for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of FT Case No. 190/2016, wherein an opinion dated 27.05.2022 was given that the petitioner is a foreigner. Being aggrieved, this writ petition is instituted.

3. In the writ proceeding, the petitioner refers to an earlier opinion dated 24.02.2016 of the Foreigners Tribunal No. 4, Morigaon in FT.M4th/02(J)/2015/17, wherein he was declared to be an Indian citizen. Accordingly the petitioner claims that by operation of the principles of res-judicata, the subsequent opinion dated

27.05.2022 would be unsustainable in law.

4. On principle, we are in agreement with the petitioner that the principles of res-judicata would be applicable even in respect of the opinion rendered by the Foreigners Tribunal. But we have also perused the opinion dated 24.02.2016 rendered in the FT.M4th/02(J)/2015/17 and have noticed that what the Tribunal had done is just state and describe the various materials that had been relied upon by the petitioner in the said proceeding and thereafter the tribunal provides that "in the result, considering the entire materials on record and the discussions above, I am of the considered opinion that the opposite parties namely (1) Md. Amir Uddin ..... are citizens of India by descent under the provisions of Section 3 of the Indian Citizenship Act, 1955 as amended in 2005".

5. For the purpose of the expression 'considering the materials on record and the discussions above', we have noticed that except for describing the materials, no reason of any kind had been given by the Tribunal to justify as to why the Tribunal was of the view that the petitioner Amir Uddin was a citizen of India.

6. The principle of res-judicata requires that there must be a prior proceeding between the same parties and that the said proceeding must be decided. As the second condition precedent of res-judicata is not satisfied in the present case that there is an earlier decision, we are of the view that the stand of res-judicata being raised in the present petition would be inapplicable.

7. The second opinion rendered by the Tribunal dated 10.04.2018 in FT.M4th/02(J)/2018 also makes it discernible that as because of the first opinion dated 24.02.2016, the principles of res-judicata was applied.

8. We have already held that the earlier opinion dated 24.02.2016 had not been rendered on the basis of any decision and therefore, the principles of res-judicata would not be applicable. Similarly for the purpose of the second opinion dated 10.04.2018 also, the principles of res-judicata would be inapplicable and therefore the said opinion declaring the petitioner to be a citizen on the principles of res-judicata would also be unacceptable in law. But in the third opinion dated 27.05.2022, we have noticed that in paragraph 5 thereof, the Tribunal ventures into the question that the High Court had made an enquiry on the conduct of his predecessor and as the earlier opinion was rendered by his predecessor, therefore the same would be inapplicable.

9. We are not in agreement with the said conclusion of the Tribunal inasmuch as, the conduct of the earlier member of the Tribunal if was enquired by the High Court, that itself would not render all the opinions rendered by the said Member to be unacceptable in law unless some specific and reasoned order is passed.

10. Accordingly, the opinion dated 27.05.2022 in FT Case No. 190/2016 is set aside and the matter stands remanded back to the Tribunal to pass a fresh opinion. The petitioner may rely upon any relevant material that he intends to rely upon and the State would also be given liberty to make a verification of the

materials that the petitioner may rely and rebut the evidence that may be rendered.

11. Some objections are raised by Mr. G Sarma, learned counsel for the respondents in the Home Department that the villages of the concerned voters list that the petitioner had produced also did not match each other.

12. Such objection can be raised before the Tribunal, if so advised.

13. The petitioner shall appear before the Foreigners Tribunal, No. 4, Morigaon. Till the reasoned order is passed, no coercive action be taken against the petitioner.

14. The writ petition is allowed as indicated above.