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BEFORE THE FOREIGNERS' TRIBUNAL, NO. 1 BONGAIGAON, ASSAM

BNGN/F.T.CASE NO. ( 51/10)

BNGN/P.E. CASE NO. (279/09)

P R E S E N T

PRESENT

SHRI DULAL SAHA, B.A. L.L.B.

MEMBER

FOREIGNERS' TRIBUNAL BONGAIGAON NO.1

UNION OF INDIA

VS

USMAN ALI.

APPEARANCE

ADVOCATE FOR THE STATE- MR.DEBABRATA DAS

FOR THE O.P.- D. A. RAHIM.

DATE OF ORDER -21/01/23

### O R D E R

This is a reference made under rule 2 (1) of the Foreigners (Tribunal) Order, 1964, for opinion as to whether Usman Ali, S/O- Lt. Joshimuddin Sk @ Joshi Sk, Vill. Barbakhra, P.S. is a foreigner from Specified Territory, who entered into India after 25<sup>th</sup> March 1971 or not?

Accordingly this Tribunal pleased to register and issued notice to the Proceedee. On being received of the notice, the Proceedee appeared and filed petition whereby claims that the present case is not maintainable and barred by Principles of Res-Judicata & hence prayed to close the present proceeding.

Upon perusal of the C/R, it reveals that, another case was registered against the  
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Member  
Foreigners Tribunal No. 1  
Bongaigaon (Assam)



present Proceedee vide earlier BNGN/F.T./Case No. 1396/09 which was disposed on 28/12/17 passed by predecessor Member and wherein the present Proceedee has been declared as an Indian Citizen.

Heard both sides, on the petition as well as made enquiry to confirm the identity of present O.P. with O.P. of earlier case.

On being satisfied about the Identity of O.P., passed this order. In compliance with the law as laid down by the full Bench of Hon'ble Supreme Court of India vide Judgment dtd. 17/05/19 passed in Civil Appeal No. 5012/2019 (Abdul Kuddus -Vs-Union of India and others). In Para 20 of the said Judgment, it reads as follows:-

" Para 20.The Opinion/Order of the Tribunal, or the order passed by the Registering Authority based upon the opinion of the Foreigners Tribunal, as the case may be, can be challenged by way of writ proceedings.....Both the opinion of the Tribunal and the order of the Registering authority result in determination of rights/status under the statute and by an authority after a contest on the merits which would necessarily operate as a bar to subsequent proceeding before the same authority for re-determination of the same issue/question. This court in Shrimati Ujjambai VS State of Uttar Pradesh & Others (AIR 1962 SC 1621) had held that the principle of res-judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial gives a finding on law or fact, its findings cannot be impeached collaterally or a second round and are binding until reserved in appeal or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any errors, either of fact or law, committed by said body cannot be controverted otherwise by way appeal or a writ, unless the erroneous determination relates to the jurisdictional matter of that body.

"Para 22" As stated above, a person aggrieved by the opinion/order of the Tribunal, can challenge the finding/opinion expressed by way of a writ petition wherein the High Court would be entitled to examine the issue with reference to the evidence and materials in the exercise of its power of Judicial review premised on the principle of 'error in the decision making process', etc. This serves as a necessary fact to correct and rectify an error in the orders passed by the Tribunal"

In view of the decision passed by the Hon'ble Supreme Court of India in the case of Abdul Kuddus (Supra), this Tribunal is of the opinion that the principles of res-judicata is equally applicable to Quashi Judicial body including Foreigners' Tribunal. Accordingly, present case of the Proceedee namely, Usman Ali, S/O- Lt. Joshimuddin Sk @ Joshi

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F.T.CASE NO. 51/10

Is barred by Principle of res-judicata and hence the entire proceeding of BNGN.F.T. Case No. 51/2010 is hereby closed.

The order passed in BNGN/F.T. Case No. 1396/09 on 28/12/17 will remain in force.

Send this order to the S.P.(B), Bongaigaon, Deputy Commissioner, Bongaigaon for N/A.

A copy of this order may be furnished to the party concerned.

Given under the hand and seal of the Tribunal today the 21st day of January, 2023.

Dictated & corrected by me.

Member,  
Foreigners Tribunal, No. 1,  
Bongaigaon (Assam)

Memo No.BFT/08/07-23/16-A. Dated 21/01/2023

Copy to:-

1. The Deputy Commissioner, Bongaigaon.
2. The Superintendent of Police (B), Bongaigaon for N/A.

Member,  
Foreigners Tribunal, No. 1,  
Bongaigaon (Assam)