

WP(C) 8014/2015

BEFORE

HON'BLE MR JUSTICE UJJAL BHUYAN

HON'BLE MRS JUSTICE RUMI KUMARI PHUKAN

Heard Mr A R Sikdar, learned Counsel for the petitioner, Mr S C Keyal, learned Assistant Solicitor General of India and Mr. M. Bhagawati, learned Government Advocate, Assam.

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 05-01-2015 passed by the learned Member, Foreigners Tribunal, Goalpara in FT Case No.5646/G/2013 whereby petitioner has been declared to be an illegal migrant of post 1971 stream and liable to be deported.

On 19-01-2016 Registry was directed to requisition the record from the Foreigners Tribunal. Accordingly, the record has been received.

A perusal of the order dated 05-01-2015 as well as the case record would go to show that notice was issued by the Tribunal on 28-05-2014. On the next date i.e. on 11-06-2014 petitioner appeared and prayed for time to file written statement. Prayer was allowed. Thereafter, petitioner took two adjournments for filing written statement. Ultimately written statement was filed on 09-07-2014. Thereafter, two dates were fixed for evidence but petitioner sought for adjournment on account of shortage of documents and illness of witness. Though prayer was allowed, on the last occasion petitioner was cautioned. When the case was fixed on 10-12-2014 for evidence, petitioner again sought for adjournment by stating that he was suffering from malaria. This time the Tribunal rejected the prayer for adjournment and fixed 05-01-2015 for final order. Accordingly, on 05.01.2015, case was heard whereafter, learned Member held that since petitioner did not adduce evidence and in view of the latest amendment to the Foreigners (Tribunal) Order, 1964 granting of further time being not possible the petitioner was declared to be an illegal migrant of post 1971 stream and thus liable to be deported.

Learned Counsel for the petitioner submits that due to non-furnishing of certified copy of voters list and other documents sought to be relied upon by the petitioner to prove his citizenship, petitioner was compelled to seek adjournments. On the last occasion, petitioner was really sick which prevented him from appearing before the Tribunal. On his being declared a foreigner, petitioner has been taken into custody and is now in detention. He seeks one last chance for the petitioner and assures the Court that petitioner will not default.

The proceeding before the Tribunal related to the question of citizenship of the petitioner. Therefore, petitioner ought to have shown due seriousness in contesting the proceeding. Petitioner was quite casual in his approach. Conduct of the petitioner in seeking repeated adjournments cannot be appreciated.

However, having said that, we find that case of the petitioner was not decided on merit. Since under Section 9 of the Foreigners Act, 1946 burden of proof was on the petitioner to prove his citizenship, in the absence of the petitioner and as the petitioner failed to adduce any evidence, the Tribunal opined that petitioner is an illegal migrant of post 1971 stream liable to be deported.

The Tribunal may be technically correct in passing the order dated 05-01-2015 but we feel that since the petitioner has now assured the Court that he would not default if given an opportunity and would contest the proceeding, and taking an overall view of the matter, we feel that it would meet the ends of justice if one last chance is given to the petitioner.

In view of the above, impugned order dated 05-01-2015 is set aside. To enable the petitioner to appear before the Tribunal and to contest the proceeding, he shall be released from detention by the Superintendent of Police (Border), Goalpara on furnishing of adequate surety to the satisfaction of the said authority.

Petitioner shall appear before the Tribunal on 21-03-2016. On such appearance, the Tribunal shall decide the reference expeditiously and in accordance with law.

It is however made clear that if the petitioner does not appear on 21-03-2016 as directed by this Court, petitioner would not be entitled to the benefit of this order. It is further made clear that if after his appearance on 21-03-2016 petitioner fails to adduce evidence, the Tribunal would be justified to decide the reference ex-parte.

Registry to send down the case record forthwith.

Writ petition is disposed of.