

GAHC010131612019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 3910/2019

1:BASET ALI @ KASED ALI
S/O MD. HASEN ALI, R/O BALAIPATHAR, P.O. KALGACHIA, P.S.
KALGACHIA, DIST.-BARPETA, ASSAM

VERSUS

1:THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI-01

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-06

3:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI-1

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHATI-5

5:THE DEPUTY COMMISSIONER
KAMRUP (M)
DIST.- KAMRUP (M)
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
KAMRUP (M)
GUWAHATI
ASSA

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

order

Date : 28-06-2019

(Manojit Bhuyan, J)

Heard Mr. R. Ali, learned counsel for the petitioner as well as Mr. A. Kalita, learned counsel representing respondent nos. 2, 5 and 6 whereas Ms. A. Verma, learned counsel represents respondent no. 4. None appears for the respondent nos. 1 and 3.

Petitioner assails *ex-parte* order/opinion dated 03.10.2018 passed by the Foreigners' Tribunal-5, Kamrup (Metro), Assam at Guwahati in FT Case No.02/2018, declaring him to be a foreigner of post 1971 stream.

Mr. Ali submits that the order of the Tribunal was passed without granting opportunity to the petitioner to contest the case and/or opportunity to discharge the burden as required under Section 9 of the *Foreigners' Act 1946*. It is stated that no notice whatsoever was served upon the petitioner.

To test the arguments so advanced, we have perused the materials available on record. From the Service Report dated 01.02.2018, at page 12 of the writ petition, it is seen that steps on the petitioner was taken in the substituted manner. The Report discloses that as the petitioner was not to be found in the address mentioned, therefore, copy of the notice was affixed/pasted on the wall of the rented house where he resided but had left about 4/5 months back, in presence of his landlord.

Categorical statements are made in the writ petition that as no notice was received, the petitioner had no knowledge regarding pendency of reference against him. It is further stated that the petitioner has a good case on merits and, given one more opportunity, can successfully discharge her burden as required under Section 9 of the *Foreigners Act, 1946*.

We have heard the learned counsel for the parties and have also perused the materials on records. There is no gainsaying that the citizenship is a valuable right. For making a declaration otherwise, fair and reasonable opportunity has to be afforded which, however, cannot be relegated to an endless exercise. Having regard to the facts in the instant case, we are of the opinion that for the ends of justice one more opportunity should be afforded to the petitioner to contest the reference case on merits.

We are of the opinion that for the ends of justice at least one more opportunity should be afforded to the petitioner to contest the police reference on merits. In this view of the matter, we set aside the order/opinion dated 03.10.2018 with direction to the petitioner to appear before the Foreigners' Tribunal-5, Kamrup (Metro), Assam at Guwahati on 17.07.2019 at 10.30 AM. It is stated that the petitioner was taken into custody on 21.05.2019 and is presently lodged at the Goalpara Detention Camp. In this situation, we direct the Commissioner of Police (Border), Guwahati to make necessary arrangement to produce the petitioner before the Foreigners' Tribunal-5, Kamrup (Metro), Assam at Guwahati on 17.07.2019. On such production, the petitioner may make application for bail along with documents in his support, which shall be considered by the Tribunal and necessary order will be passed on terms and conditions that may be set down by the Tribunal. It is expected that the Tribunal will fix the next immediate date within a reasonable time, enabling the petitioner to file written statement and documents. We make it clear that, at any rate, the proceedings before the Tribunal shall be concluded within a period of 60 (sixty) days from 17.07.2019. We also make it clear that in the event bail is granted and thereafter petitioner defaults in appearing before the Tribunal on dates to be fixed in the case and also fails to take the required steps, it shall be open to the Tribunal to pass such order or orders as may be deemed fit and proper and in accordance with law.

To the extent above, the writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant