

GAHC010165382019



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

Case No. : WP(C) 5297/2019

1:MOJIBUR RAHMAN
S/O- ABDUL HASSEN, VILL. AKARABORI, P.O.AKARABORI, P.S. DHING,
DIST. NAGAON, PIN- 782123.

VERSUS

1:THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI-01.

2:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT
DISPUR
GHY.-06.

4:THE CO-ORDINATOR OF NRC
BHANGAGARH
ASSAM
GHY.-05.

5:THE DEPUTY COMMISSIONER
JORHAT
ASSAM
PIN- 785001.

6:THE SUPERINTENDENT OF POLICE (B)

JORHAT
DIST.- JORHAT
ASSAM
PIN- 785001.

7:THE OFFICER IN CHARGE
TITABOR POLICE STATION
DIST.- JORHAT
ASSAM
PIN- 785630

Advocate for the Petitioner : MR. SK N MOHAMMAD

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

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 29-11-2019

(Manojit Bhuyan, J)

Heard Mr. Sk. S.N. Mohammad, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent no. 1. Ms. B. Das, learned counsel represents respondent no. 2. Mr. J. Payeng, learned counsel represents respondent nos. 3, 5, 6 and 7 whereas Ms. U. Das, learned counsel appears for respondent no. 4.

Petitioner assails *ex-parte* order/opinion dated 13.02.2012 passed by the Foreigners Tribunal, Jorhat, in Case No. JFT. 2841/2006, declaring him to be a foreigner, having illegally entered into India (Assam) after 25.03.1971 without any valid documents.

Mr. Mohammad 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 at paragraph 8 of the writ petition that no notice, whatsoever, was served upon the petitioner. Further it is stated at paragraph 5 of the writ petition that the petitioner had come to learn about the impugned opinion only when the Registrar of Citizenship Registration Office, Dhing sent notice to the petitioner and his family members on 30.01.2019 for hearing relating to NRC.

To test the arguments so advanced we have perused the materials available on record. From the Service Report, at reverse side of page 19 of the case records, it is seen that steps on the petitioner was taken in the substituted manner. However, Report discloses that as the petitioner was not to be found in the address mentioned, the Process Server had affixed the notice in a public place by means of 'Latkaijari'.

Having regard to the manner of service, we are of the considered view that substituted service of notice, as required to be done under Paragraph 3(5)(f) of the *Foreigners (Tribunals) Order, 1964*, was not complied with. We are also of the view that the petitioner was denied opportunity of hearing to contest the case on merits. It clearly appears that no notice was served on the petitioner by affixing a copy of the notice on the outer door or some other conspicuous part of the house in which the petitioner ordinarily resides or last resided or reportedly resided or personally worked for gain or carries on business.

In view of the above, we set aside the impugned order dated 13.02.2012 with direction to the petitioner to appear before the Foreigners Tribunal, Jorhat, on 20.12.2019, on which date he shall file his written statement without fail. No fresh Notice is required to be issued by the Tribunal, either for his appearance or for filing written statement. Tribunal shall proceed accordingly and conclude the proceeding within 60(sixty) days from 20.12.2019. We make it clear that if the petitioner defaults in appearing before the Tribunal and to file written statement on 20.12.2019 and/or defaults in participating in the proceeding on the dates to be fixed in the case, 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.

For the purpose of concluding the reference case within the period specified above, the Tribunal shall act upon the certified copy of this order, which the petitioner is permitted to furnish before the Tribunal on the date of appearance i.e. 20.12.2019.

To the extent above, the writ petition stands allowed.

Office to return the case records to the Tribunal forthwith.

JUDGE

JUDGE

Comparing Assistant