

GAHC010191062019



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

Case No. : WP(C) 6246/2019

1:NAUSAD ALI
S/O. ABDUL KADIR, VILL. RAMPUR SATRA, P.O. KADAMONI, P.S.
BATADRAVA, DIST. NAGAON, ASSAM, PIN-782122.

VERSUS

1:THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI-110001.

2:THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

3:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

4:THE NRC STATE COORDINATOR
NRC
BHANGAGARH
GUWAHATI-781005
ASSAM.

5:THE DY. COMMISSIONER
NAGAON
P.O. AND P.S. NAGAON
ASSAM

PIN-782001.

6:THE SUPDT. OF POLICE (B)
NAGAON
ASSAM
PIN-782001

Advocate for the Petitioner : MR M H AHMED

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

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

order

Date : 31-01-2020

(Manojit Bhuyan, J)

Heard Md. A. Hussain, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent no. 1. Also heard Ms. B. Das, learned counsel represents respondent no.2; Mr. A. Kalita, learned counsel represents respondent nos.3, 5 and 6 and Ms. A. Verma, learned counsel for respondent no. 4.

Petitioner assails the ex-parte order dated 26.03.2018 passed by the Foreigners' Tribunal 6th, Nagaon, Assam in F.T. Case No.-FT(6th)-654/2017 declaring him to be an illegal Bangladeshi migrant/foreigner of post 25.03.1971 stream.

Mr. Hussain 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 of him, 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. In the opinion it is recorded that notice was served upon the petitioner but he did not appear and failed to contest the case. However, from the Report of the Process Server, as available in the case records, it is seen that notice was served to the brother of the petitioner, as the petitioner was not to be found in

the house. At paragraph-5 of the writ petition it is stated that no notice was received by him nor by Inamul, who is stated to be the brother of the petitioner. The petitioner has only one brother and his name is Gulzar Hussain and he does not know how to put signature. Mr. Hussain submits that the petitioner has a good case on merits and, given an opportunity, he can successfully discharge the burden that he is not a foreigner.

On the above we find that although service of notice on the petitioner appears to be in terms of 3(5)(c) of the *Foreigners' (Tribunals) Order, 1964*, however, it is the categorical stand of the petitioner at paragraph 5 of the writ petition that the person who is shown to have received notice on behalf of the petitioner is altogether an unknown person. To avoid any controversy with regard to service of notice, we are inclined to grant one opportunity to the petitioner to contest the police reference on merits. We hold that the petitioner is entitled to benefit of doubt for the categorical statement made on oath denying receipt of notice. There is no gainsaying that citizenship is a valuable right. Before making a declaration otherwise, fair and reasonable opportunity has to be afforded which, of course, cannot be relegated to an endless exercise.

We are of the view that the petitioner should be granted an opportunity to contest the reference case on merits for the ends of justice.

We, therefore, set aside the impugned order dated 26.03.2018 in so far as the petitioner is concerned, with direction to the petitioner to appear before the Foreigners' Tribunal 6th, Nagaon, Assam on 17.02.2020. It is stated that the petitioner was taken into custody on 03.05.2019 and is presently lodged at the Tezpur Detention Camp. In this situation, we direct the Superintendent of Police (Border), Nagaon to make arrangement for production of the petitioner before the Foreigners' Tribunal 6th, Nagaon, Assam on 17.02.2020. On such production, the petitioner shall make application for bail along with documents in his support. If such application is filed, the same shall be considered by the Tribunal and necessary order for bail 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 17.02.2020. We also make it clear that in the event bail is granted and the 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.

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 on 17.02.2020. Petitioner is also permitted to supply a copy of this order to the Superintendent of Police (Border), Nagaon, for his doing the needful in terms of the above.

Office to send back the case records to the Tribunal forthwith.

To the extent above, the writ petition stands allowed.

JUDGE

JUDGE

Comparing Assistant