

GAHC010299332019



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

Case No. : WP(C)/31/2020

KHALIL ALI @ A. KHALIL
S/O- LATE ASHMAT ALI, RESIDING AT VILLAGE RAJKUMAR BASTI,
LAHARIJAN, P.S- KHATKHATI, DISTRICT KARBI ANGLONG, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY, HOME AFFAIRS, NEW DELHI 01

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI 06

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI 01

4:THE SPECIAL COUNSEL FOR NRC
GOVERNMENT OF ASSAM
GUWAHATI 01

5:THE SPECIAL COUNSEL OF FOREIGNERS TRIBUNALS
GOVERNMENT OF ASSAM
GUWAHATI 01

6:THE SUPERINTENDENT OF POLICE BORDER
KARBI ANGLONG
ASSAM PIN- 782460

7:THE DEPUTY COMMISSIONER

DISTRICT KARBI ANGLONG
ASSAM PIN- 78400

Advocate for the Petitioner : MS. J PAUL

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

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

ORDER

29.01.2021

(Manojit Bhuyan, J)

Heard Mr. J. Paul, learned counsel for the petitioner as well as Mr. D.C. Bora, learned counsel representing respondent no. 1. Mr. J. Payeng, learned counsel represents respondent nos. 2, 5, 6 and 7; Ms. N. Upadhyay, learned counsel represents respondent no. 3 whereas Ms. L. Devi, learned counsel appears for respondent no. 4.

Petitioner assails order/opinion dated 05.07.2017 passed by the Foreigners' Tribunal, Diphu, in FT Case No. 93/2012, declaring him to be a foreigner.

Mr. Paul 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 appears from the materials available on record that the petitioner appeared before the Tribunal on 18.01.2017, consequent upon due service of notice and prayed for time to file written statement. On four occasions the matter was fixed for filing of written statement but the petitioner remained absent without steps. In such a situation, an adverse view was taken by the Tribunal and the impugned order/opinion dated 05.07.2017 was rendered.

Mr. Sharma submits that having regard to the fact that the petitioner could not appear before the Tribunal for valid reasons, the reference case ought not to have been decided against the petitioner without granting adequate opportunity to defend the case. He submits that it is not a case where the petitioner deliberately remained absent and/or had evaded to contest the case

over an endless period of time compelling the Tribunal to proceed and render *ex-parte* opinion. It is further stated that the petitioner has a good case on merits and, given an opportunity, he can successfully discharge the burden as required of him under section 9 of the *Foreigners' Act, 1946*. It is further stated that citizenship being a valuable right, fair and reasonable opportunity requires to be afforded. Further, it is stated in para 3 of the writ petition that on 27.01.2017 the petitioner had faced a mild brain stroke whereby his right side of the body became paraplegic (right side paralysis).

We have heard the learned counsels for the parties and have also perused the materials on record. 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 05.07.2017, with direction to the petitioner to appear before the Foreigners' Tribunal, Diphu on 19.02.2021. It is stated that the petitioner was taken into custody on 02.07.2019 and is presently lodged at the Jorhat Detention Camp. In this situation, we direct the Superintendent of Police (Border), Karbi Anglong, Diphu to make necessary arrangement to produce the petitioner before the Foreigners' Tribunal, Diphu on 19.02.2021. On such production and on application made for bail along with documents, the Tribunal shall take steps to release the petitioner on bail. 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 19.02.2021. We also make it clear that if 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.

To the extent above, the writ petition stands allowed.

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. 19.02.2021. The petitioner is also permitted to supply a copy of this order to the Superintendent of Police (Border), Karbi Anglong, Diphu, for his doing the needful in terms of the above.

Office to send back the case records forthwith.

JUDGE

JUDGE

Comparing Assistant