

GAHC010282602019



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

Case No. : WP(C)/8506/2019

JANTU DAS
S/O- LT SRIKRISHNA DAS, R/O- VILL- SIDDHIPUR, P.O. KATIRALI, P.S.
KATIGAON, DIST- CACHAR, ASSAM

VERSUS

UNION OF INDIA AND 5 ORS.
REP. BY MINISTRY OF HOME AFFAIRS, NEW DELHI

2:STATE OF ASSAM
REP. BY THE MINISTRY OF HOME
DISPUR
GHY-6

3:DY. COMMISSIONER
CACHAR

4:PRESIDING OFFICER
FOREIGNERS TRIBUNAL
4TH SILCHAR

5:SUPERINTENDENT OF POLICE (B)
SILCHAR
CACHAR

6:OFFICER-IN-CHARGE
KATIGORAH P.S.
DIST- CACHAR
ASSA

Advocate for the Petitioner : MR. S P CHOUDHURY

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MRS. JUSTICE MALASRI NANDI

:: ORDER ::

01.12.2021

[N. Kotiswar Singh, J]

Heard Mr. K. Biswakarma, learned counsel appearing for the petitioner. Also heard Ms. A. Verma, learned Special Counsel, Foreigners Tribunal appearing for respondent Nos.2, 4, 5 & 6 and Ms. U. Das, learned Additional Senior Government Advocate, Assam for respondent No.3. Ms. L. Devi, learned counsel appears on behalf of Mr. R.K.D. Choudhury, learned ASGI for respondent No.1.

2. In this petition, the matter pertains to challenge of the *ex-parte* order dated 18.09.2017 passed by the learned Member, Foreigners Tribunal-4th, Cachar at Silchar in Case No. F.T.4th/247/2017 [I/Case No. 2166/2007].

3. Perusal of the aforesaid *ex-parte* order dated 18.09.2017 indicates that the notice was issued to the petitioner. The aforesaid order also mentions that the notice was served on the proceedee/O.P. However, the O.P. did not appear nor anybody on behalf of the O.P. to file objection consequence upon the notice and also did not file written statement and accordingly, *ex-parte* proceeding was drawn up against the O.P./petitioner.

4. Learned counsel for the petitioner on the other hand submits that the petitioner never received any notice from the concerned Foreigners Tribunal and as such, the *ex-parte* order is illegal and liable to be set aside. Learned counsel for the petitioner also submits that the petitioner has, otherwise, sufficient documents and evidences which would show that he is an Indian citizen and not a foreigner.

5. We have perused the original records requisitioned from the Foreigners Tribunal.

6. In the copy of the summons, it is recorded to have been received by one Sukesh Das,

C/o Srikrishna Das. The learned counsel for the petitioner submits that though Srikrishna Das is the name of the petitioner's father but there is no relative in name of the Sukesh Das who had apparently put his signature on the summons.

From the records, it is clearly seen that since the petitioner Jantu Das himself did not receive summons but by somebody who put his signature as Sukesh Das, it is incumbent upon the Process Server to indicate the relationship of the said Sukesh Das who had put the signature on the notice.

7. The learned counsel for the State also cannot enlighten as to who Sukesh Das is.

8. Under the circumstances, we are of the view that the notice was not properly served upon the petitioner and as a consequence, the subsequent proceeding also will be rendered illegal.

9. Learned counsel for the petitioner further submits that he has a copy of the Identity Card issued by the competent authority on 03.08.1964 where the name of his father Srikrishna Das appears along with his grandfather's name Jaduram Das who had been recorded to have migrated to India on 01.08.1964 and registered on 03.08.1964 and they were issued Camp Registration No. 1522 by the competent authority.

10. Petitioner also has annexed a copy of the voters list of 1989 and the voters list of 2016 as well showing the name of his father Srikrishna Das.

11. We are also of the view that if the petitioner is able to prove the aforesaid documents in accordance with law, he can certainly make a legitimate claim that he is an Indian citizen, not a foreigner.

12. Be that as it may, as we have found that the petitioner was not properly served notice before the Tribunal proceeded with the matter *ex-parte*, we are of the opinion that the petitioner may be afforded another opportunity to appear before the learned Foreigners Tribunal to prove his case.

13. Accordingly, for the reasons discussed above, the present petition is allowed by setting aside the impugned *ex-parte* order dated 18.09.2017 passed by the learned Member, Foreigners Tribunal-4th Cachar at Silchar in Case No. F.T.4th/247/2017 [I/Case No.

2166/2007].

14. Petitioner will appear before the aforesaid Foreigners Tribunal on or before **17.01.2022** and may file his written statement and relevant documents and also adduce evidences in support of his claim that he is an Indian, not a foreigner.

15. Thereafter, the learned Foreigners Tribunal will proceed with the matter in accordance with law and pass appropriate opinion in that regard.

16. Since the petitioner had been allowed to remain on bail vide order dated 05.08.2021 passed by this Court, the petitioner will continue to remain on bail on similar terms and conditions.

17. With the above observations and directions, the present petition is disposed of.

JUDGE

JUDGE

Comparing Assistant