

GAHC010207002019



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

Case No. : WP(C) 6404/2019

1:MUZIBUR RAHMAN
S/O BAPDHAN ALI, PERMANENT R/O VILL. ISLAMPUR, PO. AND PS.
MERAPANI, DIST. GOLAGHAT, ASSAM, PRESENTLY HOLDING THE POST
OF ASSISTANT SUB INSPECTOR (A.S.I.), BORDER SECURITY FORCE,
PUNJAB, KHANAN, DIST. HOSHIRPUR, INDIA

VERSUS

1:THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI-6
ASSAM

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI
INDIA

4:THE FOREIGNERS TRIBUNAL
JORHAT
ASSAM

5:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI-5

6:THE SUPERINTENDENT OF POLICE (BORDER)
GOLAGHAT
ASSAM

7:THE ELECTION OFFICER
GOLAGHAT
ASSAM
GOLAGHAT

8:THE ELECTION OFFICER
JORHAT
ASSAM
JORHA

Advocate for the Petitioner : MR. N ZAMAN

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

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

06.09.2019

(Manojit Bhuyan, J)

Heard Mr. S. Bora, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent no.1. Mr. A. Kalita, learned counsel represents respondent nos.2, 4, 6, 7 and 8 whereas Mr. A.I. Ali, learned counsel represents respondent no.3. Ms. U. Das, learned counsel appears for respondent no.5.

Petitioner assails the common *ex-parte* order dated 21.12.2018 passed by the Foreigners' Tribunal, Jorhat in Case No. FTG(D) 487/2010, along with other matters, declaring him to be a foreigner having illegally entered into the territory of India (Assam) after 25.03.2019 without any valid document.

Mr. Bora 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. It is seen from the order dated 21.12.2018 that notice was deemed to have been served on the petitioner in terms of para 3(5)(g) of the *Foreigners (Tribunal) Order, 1964*. However, from the Report of the Process Server at page 38, it is seen that as the petitioner could not be found, therefore, copy of the notice was affixed on the notice board of the office of the Gaonburah.

At paragraph-18 of the writ petition, the petitioner submits that on 01.08.2019, he came to know about the *ex parte* order when the petitioner attended NRC hearing at Golaghat. Petitioner submits that he has a good case on merits and, given one more opportunity, he can successfully discharge the burden, as required of him, under Section 9 of the *Foreigners' Act, 1946*.

Having regard to the manner of service, as above, we are of the considered view that substituted service of notice, as required to be done under 3(5)(g) 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 pasted in a conspicuous place of his residence, witness by one respectable person of the locality who has given his signature or thumb impression and has agreed to be available and stand as witness with regard to such service of notice.

In this view of the matter we set aside the impugned order dated 21.12.2018, in so far as Case No. FTG(D) 487/2010 involving the petitioner is concerned, with direction to the petitioner to appear before the Foreigners' Tribunal, Jorhat on 27.09.2019, at 10.30 AM, on which date he shall file his written statement as well without fail. No fresh Notice is required to be issued by the Tribunal, either for his appearance or for filing written statement. The Tribunal shall proceed accordingly and conclude the proceeding within 60(sixty) days from 27.09.2019. We make it clear that if the petitioner defaults in appearing before the Tribunal and to file written statement on 27.09.2019 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. 27.09.2019.

To the extent above, the writ petition stands allowed.

JUDGE

JUDGE

Comparing Assistant