

GAHC010008382021



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

Case No. : WP(C)/460/2021

BISHNU KHATRIYA
S/O LATE SURJYA KHATRIYA @ SURJYA KANTA KHATRIYA,
RESIDENT OF BONDA COLONY, PS PRAGJYOTISHPUR, DIST KAMRUP (M)
ASSAM, 781150

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOVT.
OF INDIA, SHASTRI BHAWAN, NEW DELHI 110001

2:THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR GUWAHATI 781006

3:THE ELECTION COMMISSION OF INDIA

REPRESENTED BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI 110001

4:THE STATE CO ORDINATOR

NATIONAL REGISTRATION OF CITIZENS
ASSAM FIRST FLOOR
ACHYUT PLAZA
GS ROAD
BHANGAGARH
GUWAHATI ASSAM
781005

5:THE DEPUTY COMMISSIONER

KAMRUP (M) ASSAM
781001

6:THE FOREIGNERS TRIBUNAL
KAMRUP(M) NO. 4
AT GUWAHATI
HEDAYATPUR
GUWAHATI 03
KAMRUP M ASSAM

7:THE SENIOR SUPERINTENDENT OF POLICE (B)
GUWAHATI KAMRUP (M) ASSAM
781001

8:THE OFFICER IN CHARGE

PRAGJYOTISHPUR POLICE STATION
KAMRUP(M) ASSAM
78115

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

26.05.2023

[A.M.Bujor Barua, J.]

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel for the respondent nos. 1 and 4; Ms. A. Verma, learned counsel for the respondent nos. 2, 6, 7 and 8; Mr. A.I. Ali, learned

counsel for the no. 3; and Ms. K. Phukan, learned counsel for the respondent no. 5.

2. The petitioner Bishnu Khatriya had been referred to the Foreigners' Tribunal, Tezpur No. 4, Kamrup [M] for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of FT Case No. FT[K(M)-4] 1129/2017 and FT Case No. 286/2017. Upon receiving notice the petitioner initially appeared before the Tribunal and filed his written statement and produced certain materials but thereafter, as per order of the Tribunal from 29.12.2018 he remained absent without any steps and in the circumstance the Tribunal was compelled to dispose of the reference in the absence of the petitioner based upon the materials which had been produced by him. As a result the opinion dated 30.05.2019 had been rendered declaring the petitioner to be the foreigner. Being aggrieved this writ petition is instituted.

3. In the writ petition only ground stated is that the petitioner does have adequate and appropriate material to establish that he is a citizen but due to inadvertent he remained absent in the Tribunal and did not participate further in the proceeding. None appearance of the person in the Tribunal after initial appearing and producing certain materials without any reason cannot be accepted to be inadvertent rather it has to be accepted to be a casual and insincere approach of the petitioner.

4. But however, for the interest of justice we intend to give another opportunity to the petitioner to appear before the Tribunal and establish his citizenship.

5. Ms. D. Ghosh, learned counsel for the petitioner upon being asked as to what cost should be imposed on the petitioner for insincere and casual

approach, states that the petitioner is financially a very poor person and the matter had also been done by the learned advocate on a pro bono basis and the petitioner is financially dependent upon his wife.

6. We have been told that the petitioner is presently about 57 years and he is otherwise able to work. It would be difficult to conceive a situation that the petitioner would be a poor person, although he may because of his approach in life is dependent on the income of his wife. But the same cannot be a reason to accept the submission that no cost be imposed upon the petitioner for his casual and insincere approach. Accordingly, the petitioner to pay a cost of Rs. 4,000/-, out of which 2,000/- shall be paid to Ms. D. Ghosh, learned counsel for the petitioner for the services rendered to the petitioner and the balance 2,000/- be paid before the District Legal Services Authority, Kamrup [M] and the cost be paid by the petitioner from his own earning by doing any work that he may do in the meantime. For the purpose to enable the petitioner to do some work and earn the money for paying the cost we defer the date of appearance before the Tribunal for a little longer period. Accordingly, the petitioner to appear before the Tribunal on 26.07.2023 and it is expected that in the intervening two months the petitioner would do some work and earn the money to pay the cost.

7. We accordingly interfere and set aside the opinion dated 30.05.2019, in aforesaid reference cases and a fresh reasoned order be passed upon appearance of the petitioner and production of relevant materials that he may desire to produce before the Tribunal. The petitioner to appear before the Tribunal upon showing proof of payment of the cost as indicated above.

8. Till the reasoned order is passed, no coercive action be taken against the petitioners.

Writ petition stands disposed of in the above terms.
Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant