

GAHC010042112020



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

Case No. : WP(C)/1557/2020

AMIN HUSSAIN
S/O- AHMED ALI, R/O- VILL- GOBARDHAN PARA, P.S. BILASIPARA, DIST.-
DHUBRI, ASSAM, PIN- 783348

VERSUS

UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTER OF HOME
AFFAIRS, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 110001

4:THAT STATE COORDINATOR
NATIONAL REGISTER OF CITIZEN (NRC)
1ST FLOOR
ACHYUT PLAZA
G.S.ROAD
BHANGAGARH
GHY
ASSAM
781005

5:THE DIRECTOR GENERAL OF POLICE (ADMIN)
ASSAM

ULUBARI
GHY-07

6:THE SUPERINTENDENT OF POLICE (B)
JORHAT
DIST.- JORHAT
ASSAM
PIN- 785001

7:THE OFFICER-IN-CHARGE
MORIONI P.S.
P.O. MORIONI
DIST.- JORHAT
ASSAM
PIN- 78500

Advocate for the Petitioner : MR. N AHMED

Advocate for the Respondent : ASSTT.S.G.I. (R1)

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MRS. JUSTICE MITALI THAKURIA

O R D E R

11.09.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner, Ms. L Devi, learned CGC appearing for the respondents in the Union of India as well as for the respondents in the NRC, Mr. G Sarma, learned counsel for the respondents in the Home Department of the Government of Assam, Mr. T Pegu, learned counsel for the respondents in the Election Commission of India as well as Mr. P Sarma, learned counsel for the Deputy Commissioner, Jorhat.

2. The petitioner Amin Hussain was referred to the Foreigners Tribunal, Jorhat for rendering an opinion as to whether he is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of

JFT Case No. 1124/2006. The Tribunal rendered a judgment dated 29.04.2009 declaring the petitioner to be a foreigner. The relevant partition of the judgment dated 29.04.2009 is extracted below:-

“Today witness on behalf of the state is present, O.P. absent without step. As reported in the notice by serving person O.P. left the place of abode for unknown destination. As such it was decided to proceed with the case exparte.

The witness for the state is examined. From the statement of the witness and other materials available in the record it is seen that the O.P. entered into the territory of India, illegally after 25th March 1971. The O.P. failed to produce any proof before the enquiry officer or before this Tribunal that he is an Indian Citizen or a foreigner as defined U/S 6A of the Citizenship (amendment) Act 1985.

As such I am of the opinion that Md. Amin Hussain, S/O. Md. Ahmed Ali, is not an Indian Citizen. He is a foreigner, who entered into the territory of India without any valid document after 25th March 1971.

Inform Referring Authority accordingly.”

3. The judgment dated 29.04.2009 is assailed in this writ petition. The petitioner takes the stand by referring to the report of the process server appearing at page 15 of the writ petition that as the notice could not be served on the petitioner, the process server had returned the notice back to the Tribunal with a report. The first paragraph of the judgment of the Tribunal does not discern in any manner as to whether the Tribunal had arrived at its satisfaction that the notices issued were duly served on the petitioner.

4. The second paragraph of the judgment dated 29.04.2009 is even more intriguing in the circumstance that under section 9 of the Foreigners Act, the burden to discharge that the proceedee is not a foreigner is upon the proceedee. But, here is a case where the State is making an endeavour to bring a witness to prove their case. As the said act of the State is also contrary to the provision of Section 9 of the Foreigners Act, 1946, we discard the view as may

be expressed by the witness which is referred in the second paragraph of the judgment.

5. It is taken note of that the police enquiry number is 297/2003, whereas the case registered is JFT 1124/2006, meaning thereby that from the year 2006, the writ petitioner proceedee had been avoiding the proceeding before the Tribunal. In the circumstance, we have passed an earlier order dated 27.06.2023 requiring the Superintendent of Police (Border), Dhubri to provide the information regarding the whereabouts of the petitioner. But it was informed that the whereabouts of the petitioner was not known to the authorities and accordingly, the order dated 07.08.2023 was passed requiring the police to apprehend the petitioner under the law as may be advised.

6. In the circumstance, the petitioner now appears before the Court with an affidavit wherein in paragraph 5, it is stated as follows:-

“5. That the deponent humbly begs to state that he did not avoid notice of the Learned Tribunal as no notice was served to the deponent. It is humbly stated that the process server report annexed in the connected writ petition as Annexure -2 itself reflects that the notice was returned unserved as the deponent was not available in the address mentioned in the notice which means the notice was not served as per requirement of law. The process server in his report stated inter alia that he could not trace the notice i.e. the present deponent in the address mentioned in the notice as the noticee left the rented house about 3 years back. The process server returned the notice unserved with the report.

It is humble submitted by the deponent that it is evident from the inquiry report that at the time of the inquiry the deponent had furnished details about his actual address but the Learned Tribunal did not attempt to serve the notice to actual address of the deponent. The deponent had no knowledge about the proceeding before the learned Tribunal as he had never received the notice. Be it stated that the learned Tribunal in the impugned ex-parte order mentioned that the O.P. left the place and hence the Tribunal decided to proceed the case ex-parte.”

7. When the report of the process server is clear enough that the notices are not served on the petitioner and the petitioner comes before the Court and takes a stand that he was unaware of the proceeding before the Tribunal, the said stand of the petitioner cannot be rejected without any other materials to the contrary.

8. When the matter was heard on 31.08.2023, Mr. J Payeng, learned counsel for the respondents in the Home Department, Government of Assam had raised an apprehension that the person who may have filed the affidavit before the Court stating that he is willing to appear before the Tribunal to prove his citizenship may or may not be the actual proceedee that the respondents intend to proceed. In the circumstance, we required both the writ petitioner as well as the concerned police official to remain personally present before the Court, so that they can verify with each other as to whether the person appearing before the Court and the intended proceedee are one and the same person.

9. Inspector Tagul Boro is present before the Court so is the writ petitioner Amin Hussain. Upon interacting with the person present before the Court, Sri Tagul Boro, Inspector has stated that the person present before the Court is in fact the intended proceedee.

10. As the proceedee has himself appeared before the Court by filing an affidavit that he intends to participate in the proceeding, accordingly the petitioner is directed to appear before the Foreigners Tribunal, Jorhat on 05.10.2023. Upon appearing before the Tribunal, the petitioner may discharge the burden to prove his citizenship under section 9 of the Foreigners Act, 1946.

11. In view of the above, the judgment dated 29.04.2009 in Case No. JFT 1124/2006 is set aside.

The writ petition is allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant