

GAHC010057322019



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

Case No. : WP(C)/3748/2019

MOMIN ALI
S/O LT. MAJAM ALI @ MAJUM ALI, R/O VILL. BALARCHAR, P.S.
ABHAYAPURI, DIST.-BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY, TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TILAK MARK, NEW DELHI-110001

2:THE ELECTION COMMISSION OF INDIA
THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI-1

3:THE STATE OF ASSAM

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

4:THE STATE COORDINATOR
NATIONAL REGISTRAR OF CITIZENS (NRC)
ASSAM
BHANGAGARH
GUWAHATI-05

5:THE DEPUTY COMMISSIONER
BONGAIGAON
DIST.-BANGAIGAON
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
DIST.-BONGAIGAON
ASSAM

7:THE OFFICER IN CHARGE
ABHAYAPURI POLICE STATION
DIST.-BONGAIGAON
ASSA

Advocate for the Petitioner : MRS. M RAJKUMARI

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER
(ORAL)

04-01-2023

[N. Kotiswar Singh, JJ]

Heard Mr. A. Khanikar, learned counsel for the petitioner. Ms. L. Devi, learned counsel appearing on behalf of Mr. RK Dev Choudhury, learned Deputy SGI for respondent no.1; Mr. G. Sarma, learned Special Counsel, F.T. appears for respondent no. 6 & 7; Mr. A.I. Ali, learned Standing Counsel, ECI, appears for respondent no.2, Ms. L. Devi, learned Standing Counsel, NRC appears for respondent no.4 and Ms. K. Phookan, learned State Counsel, Assam, appears for respondent nos.3 & 5.

2. Considering the nature of the case, as revealed, we are of the view that the

present writ petition can be disposed of at this stage without issuing any formal notice to the respondents.

3 By filing this petition the petitioner has challenged the impugned *ex parte* opinion dated 30.08.2016 passed by the learned Foreigners Tribunal, Bongaigaon no.2, Abhayapuri, Assam, in Case No. BNGN/FT/Case No.975/07 by which the petitioner has been declared as a foreigner of post 25.03.1971 and has prayed for remanding the matter before the concerned learned Tribunal for a fresh consideration.

4. Learned counsel for the petitioner submits that the learned Tribunal passed the impugned *ex parte* opinion dated 30.08.2016 because of the failure on the part of the petitioner to appear before the Tribunal for filing evidence on affidavit. It has been submitted that on 15.10.2009, 28.06.2009 and 20.02.2016 the petitioner/proceedee appeared before the Tribunal along with his engaged counsel and filed the written statement. It has been further submitted that however, the petitioner could not appear before the Tribunal on subsequent dates because to earn his livelihood he had proceeded to Tamil Nadu in search of work and due to this, a communication gap arose between the petitioner and his lawyer. It has been submitted that after knowing about the Tribunal's order dated 30.08.2016, he communicated with his lawyer and thereafter, to set aside the said impugned order dated 30.08.2016, he filed an application being Misc. Case No.26/2016 before the said Foreigners Tribunal, which was dismissed vide order dated 22.12.2016 on the ground of inordinate delay in approaching the Tribunal. Accordingly, the petitioner has filed this application before this

Court seeking setting aside the impugned *ex parte* order dated 30.08.2016 as well as the order dated 22.12.2016 passed in Misc. Case No.26/2016 by the Tribunal.

5. It has been submitted by the learned counsel for the petitioner that the petitioner otherwise has sufficient documents to prove that he is an Indian and not a foreigner. In this regard he has drawn attention of this Court to the voters list of 1966 where the names of one Majam Ali, son of one Sabed Ali and one Mohela Bibi, wife of Majom Ali, whom the petitioner claims to be his parents, were entered under Village-371-Madrassapara, Cricle-Srijangram, P.O-Madrassapara, P.S.-North Salmara, Sub-Division & Dist.--Goalpara, Abhayapuri (S.C.) L.A.-42 Constituency. Similarly, in the voters list of 1970 the names of the petitioner's parents had been reflected under the same village. It has been submitted that in the voters lists of 1997 and 2011 the name of the petitioner appeared where his father's name had been shown as Momin Ali. Accordingly, it has been submitted that these are very important documents on the basis of which the petitioner can claim that he is an Indian and not a foreigner as his parents were in Assam (India) before 1971.

6. Learned counsel for the petitioner also submits that it is not the case that the petitioner had failed to appear or was negligent or not willing to take part in the proceeding of the case, inasmuch as, he had filed his written statement, but unfortunately, he could not appear before the Tribunal on the subsequent date because he was in Tamil Nadu to earn his livelihood. Learned counsel for the petitioner submits that the petitioner is financially very poor person and he is a daily wage

earner and as such, the petitioner has no knowledge about the significance of the proceedings before the Foreigners Tribunal. Accordingly, learned counsel for the petitioner prays that the petitioner may be given another opportunity to prove before the Tribunal that he is an Indian and not a foreigner.

7. On the other hand, Mr. G. Sarma, learned Special Standing Counsel, F.T., submits that the petitioner should be more careful, inasmuch as, if the petitioner does not appear before the Tribunal to pursue his case, he should blame himself and no one else.

8. We have heard learned counsel for the parties and perused the records.

9. As regards the dismissal of the application i.e. Misc. Case No.26/2016, which was filed to set aside the impugned ex parte order dated 30.08.2016, on the ground of inordinate delay, and that the Tribunal has no power to condone such belated application, this Court in ***Abdul Salam vs. Union of India & Ors., 2021 (5) GLT 734*** has already held that the Tribunal has the power to condone the delay in filing any such belated application.

10. Accordingly, considering the nature of the case, we are of opinion that since the petitioner has claimed that he has certain documents on the basis of which he can prove that he is an Indian and not a foreigner, he may be given an opportunity to prove his citizenship by giving him a chance to adduce all the necessary documents.

11. Under such circumstances and for the reason discussed above, we allow this petition by setting aside the *ex parte* opinion dated 30.08.2016 passed by the learned Foreigners Tribunal, Bongaigaon no.2, Abhayapuri, Assam, in Case No. BNGN/FT/Case No.975/07 as well as the order dated 22.12.2016 passed in Misc. Case No.26/2016 by the same Tribunal.

12. The petitioner shall, accordingly, appear before the concerned Foreigner Tribunal on 07.02.2023 and shall adduce his evidence to prove that he is an Indian and not a foreigner. The Tribunal after hearing the parties and considering the evidence so adduced by the petitioner will proceed with the reference in accordance with law. It is made clear that if the petitioner fails to appear before the Tribunal on that date (07.02.2023), the order passed by this Court today shall stand recalled without any further order of this Court and the *ex parte* opinion dated 30.08.2016 will stand revived and the law will take its own course.

13. However, it is made clear that since the nationality of the petitioner is already under cloud, till the subsistence of the proceeding before the Tribunal, he will remain on bail on furnishing a bail bond of Rs. 5,000/- (Rupees five thousand) with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Bongaigaon during the pendency of the proceeding before the Tribunal. The concerned Superintendent of Police (Border) shall also take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner. The petitioner also shall not leave the jurisdiction of Bongaigaon district without furnishing the details

of the place of destination and his place of stay to the Superintendent of Police (Border), Bongaigaon including relevant contact/mobile number.

It is made clear that failure on the part of the petitioner to provide relevant mobile/contact number will warrant recalling of this bail order.

14. With the above observations and directions, the writ petition stands disposed of.

15. Copy of this order be furnished to the Superintendent of Police (B), Bongaigaon for doing the needful.

JUDGE

JUDGE

Comparing Assistant