

GAHC010134362022



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

Case No. WP(C)/2347/2021

SAHIDUL ISLAM @ MD. SAHIDUR SEIKH
S/O- BOHIYET SHEIKH
R/O- VILL- DAYARCHAR
P.O- FEKAMARI
P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA MANKACHAR
ASSAM
PIN-783135

VERSUS

THE UNION OF INDIA AND 8 ORS
REP. BY THE SECY.
MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA
SHASTRI BHAWAN
NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001

4:THE STATE COORDINATOR
NATIONAL REGISTRATION OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA

G.S.ROAD
BHANGAGARH
GHY
ASSAM
PIN- 781005
5:THE DY. COMMISSIONER
JORHAT
P.O. JORHAT
P.S. JORHAT
DIST.- JORHAT
ASSAM
PIN- 785001
6:THE DY. COMMISSIONER
SOUTH SALMARA MANKACHAR
P.O. FEKAMARI
DIST.- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135
7:THE FOREIGNERS TRIBUNAL
JORHAT
ASSAM
DISTRICT- JORHAT
ASSAM
PIN- 785001
8:THE SUPERINTENDENT OF POLICE (B)
JORHAT
ASSAM
P.O JORHAT
P.S.- JORHAT
DISTRICT- JORHAT
ASSAM
PIN- 785001
9:THE OFFICER-IN-CHARGE
OF JORHAT P.S.
P.O JORHAT
P.S.- JORHAT
DISTRICT- JORHAT
ASSAM
PIN- 785001

Advocate for : MR. M AHMED

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 8 ORS

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

13.02.2023

Heard Ms. D. Ghosh, learned counsel for the petitioner; Ms. L. Devi, learned Standing Counsel for the respondent nos. 1 and 4; Ms. A. Verma, learned Standing Counsel for the respondent nos. 2, 8 and 9; Mr. A. Hoque, learned Standing Counsel for the respondent no. 3; and Ms. U. Das, learned counsel for the respondent nos. 5 and 6.

2. The petitioner was referred to the Foreigners Tribunal, Jorhat for an opinion as to whether he is a person who entered the state of Assam from the specified territory subsequent to 25.03.1971. The order dated 02.07.2018 as per the order sheet reveals as extracted:

“The O.P. of the case is absent today without any step.

It appears from the report of the P/S that having failed to 'trace out the present residential address/where about of the said O.P. the notice therefore being displayed by pasting the same in a conspicuous place. Hence, the notice is duly served as per 3[5][f] of the F[T] order, 1964.

However, inspite of the completion of the service of notice, the said O.P. is absent today without any step.

For the ends of justice, the case is fixed again on 13.07.2018 for app. & W.S.”

3. Due to non appearance of the petitioner an ex-parte opinion dated 30.10.2018 in FT Case no. 34/2011 was passed. Being aggrieved this writ petition is instituted. The petitioner takes a stand that he did not receive any notice from the tribunal requiring his appearance. The order dated 02.07.2018 makes it discernible that having failed to trace out the petitioner, the notice was displayed by pasting the same in a conspicuous place, without stating as to what was the conspicuous place. The said procedure that was adopted appears to be in deviation of the required procedure of the law, in as much as, the requirement of law is that

the notice is to be pasted at the last known residential address of the proceedee in case he is untraceable, and it cannot at any convenient place as per the discretion of the tribunal and call it to be a conspicuous place.

4. Considering the matter in its entirety and for the interest of the justice, the ex-parte opinion dated 30.10.2018 in FT Case no. 34/2011 is set aside.

5. The petitioner to appear before the Foreigners Tribunal, Jorhat on 29.03.2023 and upon his appearance that the tribunal may render its opinion as per law, as may be advised.

6. Writ petition stands allowed as indicated above.

7. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant