

GAHC010065782018



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

**Case No. : WP(C)/2102/2018**

JOHIRUL ISLAM @ JAHUR UDDIN  
S/O LATE INNUS ALI, R/O VILLAGE UTTAR UDMARI, PS DABAKA, DIST.  
HOJAI, ASSAM, PIN-782440

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY  
OF HOME AFFAIRS, NEW DELHI-110001

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

3:THE DEPUTY COMMISSIONER  
HOJAI  
DIST. HOJAI  
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)  
HOJAI  
PO AND PS HOJAI  
DIST. HOJAI  
ASSAM

5:THE ELECTION COMMISSION OF INDIA  
REPRESENTED BY THE CHIEF ELECTION COMMISSION OF INDIA  
NIRVACHAN ASHOKA ROAD  
NEW DELHI

6:THE NATIONAL REGISTER OF CITIZEN  
REPRESENTED BY THE STATE COORDINATOR  
ASYUT PLAZA  
BHANGAGARH  
GUWAHATI-781005  
DIST. KAMRUP (M)  
ASSA

**Advocate for the Petitioner** : MR. J C GOGOI

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

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HONOURABLE MRS. JUSTICE MITALI THAKURIA**  
**ORDER**

**22.11.2023**

**(M. Thakuria, J)**

Heard Mr. J. C. Gogoi, learned counsel for the petitioner and Mr. P. S. Lahkar, learned CGC for the respondent No.1. Also heard Mr. G. Sarma, learned Standing counsel, Home Department, Assam for the respondent Nos. 2 & 4; Mr. P. Sharma, learned Government Advocate, Assam for the respondent No. 3 as well as Mr. A. I. Ali, learned Standing counsel, Election Commission of India for the respondent No.5.

**2.** On being aggrieved with the impugned Order/opinion dated 31.07.2017 passed by the learned Member Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai, Assam, passed in F.T.(D) Case No.1046/2015 arising out of SP's F.T. Case No.720/2012, the present petition has been preferred.

**3.** Mr. Gogoi, learned counsel for the petitioner has submitted that after receipt

of the notice from the learned Tribunal, the petitioner appeared before the said Tribunal through his engaged counsel and filed his written statement along with the photostat copies of some supporting documents. But, at the subsequent stage, the petitioner could not appear before the said Tribunal as he could not communicate and also he was not provided with proper instruction by his engaged counsel. Considering the ground of non-appearance of the petitioner, and also without giving any chance of adducing evidence or filing of documents, the learned Member Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai, Assam passed the impugned Order/opinion dated 31.07.2017 illegally and arbitrarily declaring the petitioner as a foreigner of post 1971 stream.

**4.** He also submits that the petitioner is a citizen of India by birth and he has sufficient supporting documents to prove himself to the citizen of Indian, however, the learned Member, Foreigners' Tribunal had passed the impugned Order/opinion dated 31.07.2017, not providing any opportunity to the petitioner for adducing evidence as well as documents and passed the order illegally declaring him as a foreign national. Hence, the learned counsel for the petitioner has submitted that the impugned Order/opinion dated 31.07.2017 passed in F.T.(D) Case No.1046/2015 by the learned Member Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai, is liable to be set aside and the petitioner should be given chance for adducing his evidence and the relevant documents before the Court to prove himself as a citizen of India and to discharge his burden under Section 9 of the Foreigners' Act 194.

**5.** In this context, Mr. G. Sarma, learned standing counsel for the Home Department/respondent has submitted that there is no illegality or irregularity

has been committed by the learned Member, Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai, while passing the impugned Order/opinion dated 31.07.2017. He also submits that the petitioner failed to appear before the said Tribunal in spite of several chances given to him and the learned Tribunal had rightly passed the order. Hence, interference of this Court is not at all necessary.

**6.** Considered the submissions made by the learned Advocates of both sides and perused the original records of F.T.(D) Case No.1046/2015. From the record it reveals that after receiving the notice, the petitioner/proceedee appeared before the learned Tribunal and by filing petition, he prayed for some time to file his written statement and accordingly, the next date was fixed i.e. on 27.06.2017 for filing of the written statement. The case was again listed on 30.06.2017 when the petitioner filed his written statement supported with some xerox copies of the documents and thereafter, the matter was fixed on 14.07.2017 for evidence. On 14.07.2017, the petitioner sought for some more time for filing his evidence in affidavit and accordingly time was granted and the case was fixed on 28.07.2017 with a direction that no further adjournment shall be granted for the same. On 28.07.2017, the petitioner could not appear before the Tribunal and his engaged counsel filed a petition on his behalf seeking adjournment, but, the said petition was rejected with an observation that there is no compelling circumstances in the petition which prevented the petitioner to file his evidence in affidavit. Accordingly, the next date was fixed on 31.07.2017 and the impugned Order/opinion was passed by the learned Member Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai by declaring the petitioner as a foreigner of post 1971 stream.

**7.** Thus, from the record, it reveals that after filing of the written statement the petitioner was granted only a date i.e. on 14.07.2017 for evidence and on the very next date i.e. on 28.07.2017, his prayer was rejected and the matter was fixed on 31.07.2017 when the impugned Order/opinion was passed accordingly.

**8.** It is fact that the petition filed on 28.07.2017 is not well explained as to what prevented the petitioner in appearing before the Court. However, as per the said petition, as seen from the records that the petitioner took the plea that his engaged counsel could not appear before the Court as he was out of station, and the said ground was not considered by the learned Tribunal and accordingly passed the impugned Order/opinion dated 31.07.2017 in absence of the petitioner/proceedee.

**9.** Considering the entire facts of the case, we find that there was no such negligence on the part of the petitioner who appeared before the Tribunal immediately on receipt of the notice and also filed his written statement along with the xerox copies of some documents and sought for time only on two consecutive occasions i.e. on 14.07.2017 & 28.07.2017 which was not considered by the learned Tribunal. Hence, we are of the view that the petitioner should be given an opportunity to contest the case by filing his evidence-in-affidavit and documents to prove himself to be a citizen of India. Accordingly, we find that, it is a fit case to remand back the original case record of F.T.(D) Case No.1046/2015 arising out of SP's F.T. Case No.720/2012 to the concerned Foreigners' Tribunal.

**10.** For the reasons above, the impugned opinion/order, dated 31.07.2017, passed by the learned Member Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at

Sankardev Nagar, Hojai, Assam, in F.T.(D) Case No.1046/2015, stands set aside. The petitioner/proceedee is hereby directed to appear before the learned Member Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai, Assam, on or before **12.12.2023** with the certified copy of this order and on his date of appearance the petitioner shall furnish his evidence-in-affidavit along with relevant documents before the said Tribunal and the learned Member Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai, shall, accordingly, hear the matter and will record the evidence of the petitioner and shall pass a reasoned order (s) in accordance with law.

**11.** With the aforesaid observation and direction, the present writ petition stands disposed of to the extent of observation made above.

**12.** Registry to send down the case record to the Foreigners' Tribunal, Nagaon, Court No.10<sup>th</sup> at Sankardev Nagar, Hojai, Assam, forthwith along with a copy of this order.

**JUDGE**

**JUDGE**

**Comparing Assistant**