

GAHC010120212019



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

Case No. : WP(C)/3674/2019

SWAPAN SUKLA DAS
S/O- LT UMESH CHANDRA SUKLA DAS, R/O- VILL- RAMPUR BASTI, P.S.
HOJAI, DIST- HOJAI/NAGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS.
RP. BY THE MINISTRY OF HOME DEPTT., 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 SUPERINTENDENT OF POLICE (B)
HOJAI
ASSAM

4:THE OFFICER-IN-CHARGE
HOJAI P.S.
DIST- HOJAI
ASSAM

5:THE DY. COMMISSIONER
DIST- HOJAI
ASSAM

Advocate for the Petitioner : MRS. S ROY

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

:: O R D E R ::

06.01.2023

[N. Kotiswar Singh, J]

Heard Mr. S. Roy, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Dy. SGI for respondent No.1; Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal for respondent Nos.2, 3 & 4 and Ms. U. Das, learned Additional Senior Government Advocate, Assam for respondent No.5.

2. Considering the nature of the case, we are of the view that the present petition can be disposed of at this stage without calling for the records.

3. In this petition, the petitioner has challenged the *ex-parte* order dated 27.03.2019 passed by the learned Foreigners Tribunal, Hojai at Sankardev Nagar, Assam in FT/H/Case No.1433/2012 by which the petitioner was declared to be a foreigner of post 25.03.1971 stream by an ex-parte order.

4. It is the case of the petitioner that after receipt of notice from the Tribunal, the petitioner appeared before the Tribunal. However, the petitioner had to leave the State for earning his livelihood as he is a mason by profession and he had gone to Kerala and as such, he could not appear before the Tribunal.

5. The learned counsel for the petitioner submits that the petitioner is a resident of Tripura having been born and brought up there but came to Assam for earning his livelihood and is in possession of sufficient documents to show that the petitioner is an Indian citizen.

6. In this regard, the learned counsel for the petitioner has drawn attention of this Court to the voters list of 1966 in the name of one Umesh Chandra Sukla Das who the petitioner claims to be his father in respect of 22 Khowai LAC, District West Tripura, Sub-Division Khowai, Part No.12.

The learned counsel for the petitioner has also drawn attention of this Court to the

certificate issued by the Headmaster Srinath Vidyaniketan Primary Section, Khowai, Tripura and to one certificate issued by the Sub-Divisional Officer, Khowai, West Tripura showing the name of the petitioner as a resident of village Lalchara, P.S. Khawai, West Tripura District.

7. The learned counsel for the petitioner has submitted that the name of the petitioner has been enrolled in the voters list of 2005 in respect of 91 Hojai Legislative Assembly Constituency and has been casting vote regularly since then.

8. It has been, accordingly, prayed that the petitioner may be given an opportunity to prove his claim before the learned Foreigners Tribunal that he is not a foreigner but an Indian.

9. Considering the submissions advanced and the documents which have been annexed to this petition, we are of the view that the petitioner may be afforded another opportunity to prove that he is an Indian and not a foreigner and accordingly, the matter is remanded to the Foreigners Tribunal, Hojai for a fresh consideration of the case of the petitioner.

10. Accordingly, the present petition is allowed by setting aside the impugned *ex-parte* order dated 27.03.2019 passed by the learned Foreigners Tribunal, Hojai at Sankardev Nagar, Assam in FT/H/Case No.1433/2012.

11. The petitioner will appear before the learned Foreigners Tribunal, Hojai at Sankardev Nagar within a period of one month from today and file his written statement, necessary documents and also adduce evidences in support of his claim.

12. The learned Tribunal, after hearing the petitioner and on appreciating the written statement and necessary documents that may be filed and also the evidences that may be adduced by the petitioner, will pass a fresh opinion as regards the citizenship status of the petitioner

13. However, since the petitioner's citizenship has come under cloud because of the *ex-parte* order dated 27.03.2019 passed by the learned Foreigners Tribunal, Hojai and though the same has been set aside, the petitioner will appear before the Superintendent of Police (Border), Hojai and furnish a bail bond of Rs.5,000/- (Rupees five thousand) only with one surety of the like amount to the satisfaction of the Superintendent of Police (Border), Hojai whereafter the petitioner will be allowed to remain on bail. The concerned Superintendent of

Police (Border) shall also take steps for capturing the fingerprints and biometrics of the iris of the petitioner.

The petitioner shall not leave the jurisdiction of Hojai District without giving details of the place of destination and his place of stay to the Superintendent of Police (Border), Hojai including relevant contact/mobile number.

It is made clear that the 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 present petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant