

GAHC010121802017



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

Case No. : WP(C)/702/2017

FAKAR UDDIN
S/O- MUJAFAR, VILL.- BORBALI, P.S.- MORAJHAR, DIST.- NAGAON NOW
HOJAI, ASSAM.

VERSUS

THE UNION OF INDIA and 6 ORS.
TO BE REP. BY SECY. TO THE GOVT. OF INDIA, HOME DEPTT., NORTH
BLOCK, NEW DELHI.

2:STATE OF ASSAM
TO BE REP. BY COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY- 6.

3:ADDL. DIRECTOR GENERAL OF POLICE
ASSAM BORDER
BHANGAGARH
GHY- 5.

4:DY. COMMISSIONER
NAGAON
ASSAM.

5:DY. COMMISSIONER
HOJAI
SHANKARDEV NAGAR
ASSAM.

6:SUPERINTENDENT OF POLICE BORDER
NAGAON

ASSAM.

7:SUPERINTENDENT OF POLICE BORDER
HOJAI
ASSAM

Advocate for the Petitioner : MR.K MIRA

Advocate for the Respondent :

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

ORDER

Date : 12.04.2023
(A.M. Bujor Barua, J)

Heard Ms. L. Wajeeda, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondent No. 1, being the Union of India. Also heard Mr. J. Payeng, learned counsel for the respondents No. 2, 3, 6 and 7, being the authorities in the Home Department and Mr. P.K. Medhi, learned counsel for the respondents No. 4 and 5, being the Deputy Commissioner, Nagaon and the Deputy Commissioner, Hojai.

2. The petitioner Fakar Uddin was referred to the Foreigners' Tribunal, Hojai, Sankardev Nagar for rendering an opinion as to whether he is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly Case No. FT/H/23/2012 was registered. The Tribunal rendered its opinion dated 28.05.2013 arriving at its conclusion that the petitioner is a foreigner who had entered the State of Assam on or after 25.03.1971.

3. In the second paragraph of the order dated 28.05.2013, it was provided as extracted below:

“The Respondent on receipt of the notice appeared in the Tribunal and

took time to file Written Statement. But he subsequently defaulted in-appearance without filling Written Statement and as such the reference was heard exparte against him."

4. The afore-extracted portion of the order of the Tribunal makes it apparent that the petitioner proceedee upon receipt of notice appeared before the Tribunal and took time to file written statement, but subsequently did not appear before the Tribunal any further which resulted in the ex-parte opinion.

5. Ms. L. Wajeeda, learned counsel for the petitioner states that the petitioner Fakar Uddin had instructed the learned counsel that no notice was served to him and therefore he did not appear any further before the Tribunal.

6. We have examined the said submission of the petitioner Fakar Uddin made before the learned counsel as to whether it is a correct statement. Accordingly the records are verified and it is noticed that the notice issued by the Tribunal contains the signature of Md. Fakar Uddin, meaning thereby that he had received the notice.

7. From such point of view, we do not find any infirmity in the order dated 28.05.2013 in Case No. FT/H/23/2012, however for the interest of justice we are inclined to provide the petitioner another opportunity to appear before the Tribunal and prove his case on merit. But because of the conduct of the petitioner, we impose a cost of Rs. 5,000/- upon the petitioner which would have been the usual order. But however because of a misleading and factual incorrect statement being made by the petitioner before the Court to the extent that no notice was served on the petitioner which resulted in the ex-parte order and having found from the records that the said statement is incorrect, a further cost of Rs. 5,000/- is imposed upon the petitioner and the petitioner is also formally warned not to make false statements before the Court.

8. Accordingly, the petitioner is directed to pay a cost of Rs. 10,000/- before

the District Legal Services Authority, Hojai and upon showing prove of payment of cost, the petitioner to appear before the Tribunal on 26.05.2023 and upon such appearance the Tribunal may decide on merit.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant