

GAHC010123302021



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

Case No. : WP(C)/5099/2021

MD. AMZAD ALI
S/O. SATTAR ALI, VILL. THURIBARI RLY. COLONY, P.S. BASUGAON, DIST.
CHIRANG, ASSAM.

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-781006.

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
GUWAHATI
ASSAM
PIN-781005.

5:THE DEPUTY COMMISSIONER

CHIRANG
DIST. CHIRANG
ASSAM
PIN-783390.

6:THE FOREGNS TRIBUNAL CHIRANG
DIST. CHIRANG
ASSAM
PIN-783390.

7:THE SUPDT. OF POLICE (B)
BONGAIGAON
ASSAM
PIN-783380.

8:THE SUPDT. OF POLICE (B)
CHIRANG
ASSAM
PIN-783390.

9:THE OFFICER IN CHARGE OF BASUGAON P.S.
DIST. CHIRANG
ASSAM
PIN-783390

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

10.04.2023

(A.M. Bujor Barua, J)

Heard Ms. D Ghosh, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC appearing on behalf of respondents in the Union of India as well as for the authorities in the NRC, G Sharma, learned counsel for the State respondents in the Home Department of Government of Assam, Mr. AI Ali, learned counsel for the Election Commission of India and Ms. U Das, learned

counsel for the Deputy Commissioner, Morigaon.

2. The petitioner Md. Amzad Ali had been referred to the Foreigners Tribunal at Chirang for rendering an opinion as to whether he is a person who entered the State of Assam from the specified territory on or after 25.03.1971 resulting in registration of Case No. BNGN/FT(CHR) /3492/2008.

3. The petitioner was served with the notice of the Tribunal and accordingly he appeared before the Tribunal, submitted his written statement, but thereafter remained absent and no evidence was rendered discharging the burden under section 9 of the Foreigners Act, 1946. In the circumstance, the ex-parte order dated 27.11.2017 was passed declaring the petitioner to be a foreigner who entered the State of Assam on or after 25.03.1971. Being aggrieved, this writ petition is instituted.

4. No acceptable reason is forthcoming as to why the petitioner did not participate in the proceeding after filing of the written statement and from such point of view, we do not notice any infirmity in the order dated 27.11.2017. But, however, for the interest of justice, the petitioner is given another opportunity to appear before the Tribunal and render all evidence that may be required or as may be advised.

5. Accordingly, the ex-parte order dated 27.11.2017 is set aside.

6. It is stated that the petitioner is economically not sound and therefore, is required to be represented by a legal aid counsel. But the same cannot be a reason not to impose any cost on the unacceptable conduct of the petitioner before the Tribunal.

7. Considering the financial status of the petitioner that he being represented by a legal aid counsel, a reduced cost of Rs. 1000/- is imposed on the petitioner

to be paid to the District Legal Services Authority, Chirang and upon showing proof of the payment of cost, the petitioner shall appear before the Foreigners Tribunal at Chirang on 26.05.2023. Upon appearance of the petitioner, the Tribunal shall pass a reasoned order.

8. As we have required the petitioner to re-appear before the Tribunal and render evidence, we further clarify that the criminal case against the petitioner in Sessions Case No. 11/2020 be also carried forward and brought to its logical end and the petitioner may appear before the criminal Court for further proceeding of the matter thereof and the criminal Court shall deal with the matter as per law.

9. Let a copy of this order be also placed before the learned Sessions Judge, Chirang in respect of Sessions Case No. 11/2020 so as to issue fresh summons to the petitioner.

10. The writ petition is allowed as indicated above.

Send back the LCR immediately.

JUDGE

JUDGE

Comparing Assistant