

GAHC010198192017



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

Case No. : WP(C)/3885/2017

MUKESH KUMAR JHA
S/O UCHIT NARAYAN JHA R/O VILL- NO. SONAJULI P.S. PANERY PIN -
784526 DIST. UDALGURI BTAD, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI.

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

3:THE SUPERINTENDENT OF POLICE B
DARRANG DISTRICT
ASSAM

4:THE SUPERINTENDENT OF POLICE B

UDALGURI DISTRICT
ASSAM

5:OFFICE OF THE DEPUTY COMMISSIONER

UDALGURI BTAD
ASSA

Advocate for the Petitioner : MRS.N S PARAJULI

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

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

ORDER

Date : 24.11.2023
(M. Thakuria, J)

Heard Mr. G. Rahul, learned counsel for the petitioner. Also heard Mr. U. K. Goswami, learned CGC for respondent No. 1; Mr. J. Payeng, learned Standing Counsel, Home Department, Assam for respondent Nos. 2, 3 & 4; and Mr. H. K. Hazarika, learned Government Advocate, Assam for respondent No. 5.

2. This is an application under Article 226 of the Constitution of India for issuance of writ in nature of Certiorari and/or mandamus and/or any other appropriate writ, order or direction of like nature.

3. On being referred by the Superintendent of Police (Border), Darrang, the learned Member, Foreigners Tribunal (2), Mangaldai, in Case No. F.T.(2) 43/06, vide impugned order/opinion dated 02.06.2007, declared the present petitioner as a foreigner of post 1971 stream. On being aggrieved by the said impugned order/opinion, passed by the learned Member, Foreigners Tribunal (2), Mangaldai, in Case No. F.T.(2) 43/06, the present petition has been preferred by the petitioner/proceedee.

4. It is submitted by the learned counsel for the petitioner that the petitioner

is a citizen of India by birth and a permanent resident of Basopatti, Madhubai District, Bihar. In the 1970, the petitioner's father- Shri Uchit Naran Jha came to Assam in search of livelihood and settled in the erstwhile Darrang District, presently Udalguri District, under BTAD in Village Sonajuli under Panery Police Station. The petitioner received a notice from the Foreigners Tribunal (2), Mangaldai, and accordingly, he appeared before the learned Tribunal through one Abdul Latif, who happens to be the advocate's clerk. But, the learned Member, Foreigners Tribunal (2), Mangaldai, passed the order *ex parte* on 02.06.2007 declaring the petitioner to be a foreigner solely relying on the reports filed by the LVO. Although the order was passed on 02.06.2007, the petitioner was not aware about the same till the month of December 2016 when the local police from Panery Police Station was making inquiry of whereabouts of the petitioner in his village. The petitioner had all the relevant documents to prove himself to be the Indian citizen and he also handed over all the documents to the advocate's clerk in the month of July, 2006. But, thereafter, he had to come to his native village for his better livelihood and he had to settled at Bihar due to some personal difficulties and hence, the petitioner came to know about the *ex parte* order only in the year 2016 when his father informed that the police from Panery Police Station was enquiring about him. Thereafter, the petitioner approached his engaged counsel to find out the status of the case and came to learn about the impugned *ex parte* order and thereafter he applied for the certified copy of the order which was furnished to him on 04.01.2017. Accordingly, he approached this Court with the present petition to set aside and quash the impugned order/opinion dated 02.06.2007, passed by the learned Member, Foreigners Tribunal (2), Mangaldai, in Case No. F.T.(2) 43/06, and also prayed to allow the present petitioner to file all the relevant documents before

the learned Member, Foreigners Tribunal to prove himself to be the Indian citizen and to contest the Case No. F.T.(2) 43/06.

5. In this context, Mr. J. Payeng, learned Standing Counsel, Home Department, has submitted that the learned Member, Foreigners Tribunal (2), Mangaldai, committed no irregularity or illegality while passing the impugned order/opinion *ex parte* against the present petitioner. From the order, it reveals that the petitioner, after receipt of the notice, appeared before the learned Member, Foreigners Tribunal (2), Mangaldai, but thereafter he failed to furnish his Written Statement and the documents in spite of giving several chances to him and that apart, he filed the present writ petition only in the year 2017, though the *ex parte* order/opinion was passed by the learned Member, Foreigners Tribunal (2), Mangaldai, in the year 2006. Accordingly, it is submitted that there cannot be any reason to interfere in the order/opinion passed by the learned Member, Foreigners Tribunal (2), Mangaldai.

6. After hearing the submissions made by the learned counsels for both sides, we have perused the original case record of Case No. F.T.(2) 43/06. From the record, it reveals that on receipt of the notice, the petitioner/proceedee appeared before the learned Member, Foreigners Tribunal (2), Mangaldai and prayed time to file Written Statement and the documents which was allowed and next date was accordingly fixed on 02.08.2006. On 02.08.2006 also, the Tribunal allowed further time to file Written Statement and documents fixing 28.08.2006 for filing of the documents etc. Further it reveals that on 28.08.2006, the petitioner remain absent without steps and hence on 25.09.2006, the case was fixed for *ex parte* hearing. On 25.09.2006 also, the

petitioner remained absent and the next date was fixed on 20.10.2006 for passing necessary order and on the subsequent dates also, the opposite party/the petitioner remained absent without steps and finally, the *ex parte* order/opinion was passed by the learned Member, Foreigners Tribunal (2), Mangaldai, on 02.06.2007. Thus, from the record, it reveals that several chances were given to the present petitioner and more than 1 (one) year was granted, but he failed to appear before the learned Member, Foreigners Tribunal (2), Mangaldai, and hence, finding no other alternative, the *ex parte* order/opinion was passed by the learned Member, Foreigners Tribunal (2), Mangaldai, declaring the present petitioner as a foreigner.

7. Record further reveals that on 09.11.2016, i.e. after more than 10 (ten) years, one petition was filed before the learned Member, Foreigners Tribunal (2), Mangaldai, praying to send the record before the learned Member, Foreigners Tribunal, Udalguri, as the record was sent to Udalguri on the point of territorial jurisdiction. In the said petition, it is mentioned that a review petition was preferred for review of the order dated 02.06.2007 and accordingly, the petition was filed on 09.11.2016. Thus, from the entire record, it reveals that the petitioner was very much aware about the proceeding and he also appeared before the learned Member, Foreigners Tribunal (2), Mangaldai after receipt of notice and prayed time for filing his Written Statement and documents. On the next occasion also, the petitioner prayed for time for filing Written Statement and documents which was accordingly allowed by the Tribunal, but thereafter he remained absent without steps and the learned Member, Foreigners Tribunal (2), Mangaldai had to fix the matter for *ex parte* hearing. There may be some reason for which the petitioner had to leave for his native village at Bihar, but it

was well within his knowledge about the pendency of the proceeding before the learned Member, Foreigners Tribunal (2), Mangaldai. But, in spite of having the knowledge about the case, he was negligent and never made any attempt to appear before the learned Member, Foreigners Tribunal (2), Mangaldai, though he was given several chances for production of the documents as well as the Written Statement and after long 10 (ten) years, he filed a petition before the learned Member, Foreigners Tribunal (2), Mangaldai to file a review petition for reviewing the order dated 02.06.2007. Thereafter, the petitioner approach this Court about 11 years later with the present petition for setting aside and quashing the *ex parte* order/opinion passed by the learned Member, Foreigners Tribunal (2), Mangaldai.

8. So, considering the entire facts and circumstances of this case and the negligent conduct of the petitioner/proceedee, we are of the opinion that the learned Member, Foreigners Tribunal (2), Mangaldai, has rightly passed the impugned opinion/order and arrived at a correct decision holding the petitioner to be a foreigner. Accordingly, we find that there is no perversity in the impugned opinion/order dated 02.06.2007, passed by the learned Member, Foreigners Tribunal (2), Mangaldai in Case No. F.T.(2) 43/06. Therefore, the present writ petition, being devoid of merit, stands dismissed.

9. Interim order passed earlier, if any, stands vacated/hereby recalled.

10. Registry shall return the records of Case No. F.T.(2) 43/06 to the learned Member, Foreigners Tribunal (2), Mangaldai along with a copy of this order.

11. Registry shall also forward a copy of this order to the Superintendent of Police (Border), Darrang for its information.

12. In terms of above, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant