

GAHC010261342017



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

Case No. : WP(C)/6196/2017

RABINDRA SARKAR
S/O LATE ISWAN CH. SARKAR @ ISHAN CH. SARKAR, R/O VILL. BALIJAN,
P.O. BAKULIA, P.S.HOWRAGHAT, DIT KARBI ANGLONG

VERSUS

THE UNION OF INDIA and 4 ORS
REPRESENTED BY THE SECY. TO THE GOVT. OF ASSAM, DEPTT. OF HOME
NEW DELHI

Advocate for the Petitioner : MR.P C DEY

Advocate for the Respondent : GA, ASSAM

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

ORDER

Date : 05.12.2023
(M. R. Pathak, J)

Heard Mr. P. C. Dey, learned counsel for the petitioner. Also heard Mr. J. Payeng, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 4 & 5 as well as Mr. H. K. Hazarika, learned Government Advocate, Assam for respondent No. 3.

2) No representation on behalf of the respondent No. 1/Union of India.

3) On being referred by the Superintendent of Police (Border), Karbi Anglong, Diphu vide Police Case No. 38/06, the learned Member, Foreigners' Tribunal, Diphu in Case No. F.T. 102/06, by the impugned *ex parte* judgment dated 17.07.2007, declared the petitioner to be a foreigner, who had illegally entered into the territory of India (Assam) from the specified territory of Bangladesh on or after 25.03.1971.

4) By the aforesaid impugned *ex parte* judgment dated 17.07.2007, the learned Member, Foreigners' Tribunal, Diphu found that in spite of receipt of notice, the petitioner did not appear before the Tribunal. Being aggrieved with the said impugned *ex parte* judgment dated 17.07.2007, noted above, the petitioner on 15.10.2007 preferred a writ petition, being WP(C) No. 5653/2007, wherein a Single Bench of this Court, by an Order dated 23.03.2009, called for the records of said Case No. F.T. 102/06 from the Foreigners' Tribunal, Karbi Anglong, Diphu. Accordingly, the records of said Case No. F.T. 102/06 was received by the Registry of this Court. The said WP(C) No. 5653/2007 was

finally disposed of on 01.02.2010 by the learned Single Judge with the following observations:

"In view of the aforesaid statements of the learned counsel, I am of the view that it would be in the interest of justice to allow the writ petitioner to file his written statement and adduce evidence to prove that he is an Indian citizen. For this limited purpose the impugned judgment is hereby set aside and consequential quite India notice dated 03.07.2007 is also hereby set aside. It is ordered accordingly.

In order to avoid delay for disposal of the proceeding, the petitioner is hereby directed to appear before the Hon'ble Tribunal Karbi Anglong on 26.02.2010 and receive further directions from the tribunal. At the same time, tribunal is also directed to decide the case afresh as expeditiously as possible preferably within a period of 4(four) months from the date of appearance of the petitioner after giving opportunity of evidence to both the sides.

With the aforesaid directions, writ petition stands disposed of."

5) Though by order dated 01.02.2010, the said WP(C) No. 5653/ 2007 preferred by the petitioner, was disposed of, wherein the Court directed the petitioner to appear before the Foreigners' Tribunal, Karbi Anglong, Diphu on 26.02.2010 and in pursuant to the same the petitioner accordingly appeared before the said Tribunal; but in absence of the relevant records of said Case No. F.T. 102/06, the appearance of the petitioner before the said Tribunal was not recorded and the said Case No. F.T. 102/06 did not proceed further in spite of said direction of the Court dated 01.02.2010, noted above.

6) Hence this writ petition by the petitioner praying for a direction to the Foreigners' Tribunal, Karbi Anglong, Diphu to decide the said Case No. F.T. 102/06 afresh as per the direction dated 01.02.2010, passed by a Co-ordinate Bench of this Court in said WP(C)/5653/2007 by extending the time limit as prescribed in the said Order dated 01.02.2010.

7) This Court, by an Order dated 20.11.2023, directed to list this matter

along with the records of WP(C) No. 5653/2007 that was disposed of on 01.02.2010. Today the said WP(C) No. 5653/2007 has been listed together with this matter. On perusal of the records of said WP(C) No. 5653/2007, we have seen that the records of Case No. F.T. 102/06, that was called for on 23.03.2009 in connection with said WP(C) No. 5653/2007, remained with it as there was no such order for returning the records of the said FT Case to the concerned Foreigners Tribunal, Karbi Anglong at Diphu.

8) Considering the above and in pursuant to the Order dated 01.02.2010, passed earlier in WP(C) No. 5653/2007, Registry is hereby directed to return the records of Case No. F.T. 102/06, arising out of Police Case No. 38/06, to the Foreigners' Tribunal, Karbi Anglong at Diphu forthwith directing the petitioner to appear before the Foreigners Tribunal, Karbi Anglong, Diphu on 28.12.2023 and on the said date, the petitioner shall submit his written statement along with evidence-in-affidavit and a certified copy of this order. The Foreigners' Tribunal, Karbi Anglong, Diphu shall record the presence of the petitioner and shall accept his written statement as well as evidence-in-affidavit to be filed by the petitioner within the stipulated time as directed above.

9) However, it is made clear that failure on the part of the petitioner to submit his written statement as well as evidence-in-affidavit in the said Case No. F.T. 102/06, noted above, the concerned Tribunal shall be at liberty to dispose of the said Case No. F.T. 102/06 in accordance with law.

10) Further, in the event of filing the written statement by the petitioner as well as his evidence-in-affidavit in Case No. F.T. 102/06 by 28.12.2023, the Tribunal concern shall dispose of the said Case No. F.T. 102/06 within a period of 4 (four) months as directed earlier by this Court vide Order dated 01.02.2010, passed in WP(C)/5653/2007, by following the due procedure of law

and as provided under the Foreigners Act, 1946 and the relevant Rules in force framed under it.

11) With the above observation, this writ petition stands disposed of.

12) A copy of this order also be furnished to the learned Member, Foreigners Tribunal, Karbi Anglong, Diphu along with the records of Case No. F.T. 102/06.

JUDGE

JUDGE

Comparing Assistant