

GAHC010263222017



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

Case No. : WP(C)/914/2017

FAZAR ALI
S/O. LT. MAKU PARAMANIK @ MAKU PARA, R/O. VILL. DOMONI, P.S.
BARPETA ROAD, DIST. BARPETA, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SHASHRI BHAWAN, TILOK MARG, NEW DELHI-1.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI- 06.

3:THE SUPERINTENDENT OF POLICE B
BARPETA

P.O.
P.S. and DIST.- BARPETA
ASSAM
PIN.- 781301.

4:THE DY. COMMISSIONER
BARPETA

P.O.- BARPETA
DIST.- BARPETA
ASSAM
PIN.- 781301

Advocate for the Petitioner : MR.M H TALUKDAR

Advocate for the Respondent : GA, ASSAMR. 2,3, and 4.

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

JUDGMENT & ORDER (ORAL)

Date : 11-04-2023

(A.M. Bujor Barua)

Heard Mr. AR Sikder, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 being the authorities under the Union of India, Ms. A Verma, learned counsel for the respondents no. 2 and 3 being the authorities under the Home Department of the Government of Assam and Ms. M Dutta, learned counsel for the respondent no. 4 being the Deputy Commissioner, Barpeta.

2. Fazar Ali, S/O Mohammad of village Domoni PS Barpeta Road of Barpeta district was noticed by the Foreigners Tribunal II, Barpeta requiring him to respond in respect of Case No. 437/2015. But the notice was served on Fazar Ali, S/O Maku Paramanik of village Domoni.

3. Fazar Ali, S/O Maku Paramanik upon being served the notice entered appearance before the Tribunal, filed written statement taking a specific stand that he is Fazar Ali, S/O Maku Paramanik of village Domoni and not Fazar Ali, S/O Mohammad of village Domoni to whom the notice was actually addressed. But the Tribunal inspite of the specific stand being taken that notice was served on a person other than to whom the notice was addressed, ignored the same and continued the proceeding against Fazar Ali, S/O Maku Paramanik of village

Domoni. Fazar Ali, S/O Maku Paramanik accordingly made an attempt to discharge the burden that he is a citizen of India. But the Tribunal took a view in its opinion dated 29.11.2016 in F.T. Case No. 437/2015 that the materials produced by Fazar Ali, S/O Maku Paramanik is not in respect of the person to whom the notice was addressed i.e. Fazar Ali, S/O Mohammad and therefore, rejected the claim of the petitioner Fazar Ali, S/O Maku Paramanik and declared him to be a foreigner.

4. We are fundamentally against the procedure adopted by the Foreigners Tribunal. If the notice is issued to Fazar Ali, S/O Mohammad of village Domoni, it is for the Tribunal to either serve the notice on the said person requiring him to discharge the burden under Section 9 of the Foreigners Act, 1946 to prove that he is a citizen of India or if the notice is served to another person and the other person comes and appear before the Tribunal and takes a stand that he is not the person to whom the notice is issued, the Tribunal ought to have considered the said aspect and brought an end to the proceeding against the other person at that stage itself. It would be a travesty of justice if the Tribunal allows the wrong person to continue with the proceeding and when he discharges his burden to be a citizen in his own name it cannot be for the Tribunal to declare him to be a foreigner as because he could not prove the citizenship of the person to whom the notice was actually addressed.

5. For the aforesaid reason the judgment and order dated 29.16.2016 in Case No. 437/2015 is set aside.

6. The Tribunals are directed to give a serious consideration if the notice is served to a person other than the person to whom the notice is addressed and the person to whom the notice is served appears before the Tribunal and indicates that the notice was served to a person other than the person to whom

the notice is served, and the Tribunals are not to proceed with the matter against the other person.

7. If the authorities of the Tribunal are of the view that the person to whom the notice is issued is also required to be proceeded to discharge the burden that he is a citizen, in such event an appropriate procedure should be followed and that person alone should be noticed and the proceeding should not be in respect of some other person to whom the notice was incorrectly served.

8. In such circumstance, it is the bounden duty of the Tribunal to reissue the notice to the person to whom the notice was actually intended and ensure that the notice is served to that person alone, requiring him to discharge his burden to prove that he is a citizen of India. If on the other hand the authorities in the Tribunal are of the view that the other person to whom the notice was served is also required to be proceeded under the law, appropriate corrective measure be taken for issuing and serving the notice to that other person.

9. With the above observation liberty is granted to the respondents in the Home Department as well as the Tribunal to issue a fresh and appropriate notice to Fazar Ali, S/O Mohammad of Domoni village to whom the notice was initially intended and if so required under the law to proceed against such person. If the respondents in the Home Department as well as the Tribunal are of the view that Fazar Ali, S/O Maku Paramanik of Domoni village is also required to be proceeded, in such event, liberty remains to follow the due procedure of law and issue the notice to Fazar Ali, S/O Maku Paramanik and initiate a proceeding against him.

10. It is a matter of serious concern that if the person to whom the notice is intended is not served and on the other hand notice is served on another person

inasmuch as the person to whom the notice was actually intended would go scot free and there would be no determination as to whether he is a foreigner, which again would merely be because a mistake was committed by the Tribunal in serving the intended notice to another person. The said aspect also ought to be taken note of by the Tribunals.

11. A copy of this order be circulated to all the Tribunals.
12. A copy of this order be made available to Ms. A Verma, learned counsel for the Home Department of Government of Assam for doing the needful.

Writ petition stands disposed of as indicated above.

JUDGE

JUDGE

Comparing Assistant