

GAHC010062932024



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

Case No. : WP(C)/1857/2024

MD. KHAMAL AZAD @ KALAM AZAD @ A KALAM AZAD @ A KALAM
S/O- LATE MD. KAMAR @MD. KAMARUDDIN@ KUMURUDDIN @KUMAR
UDDIN MIA @KUMAR UDDIN SHEIKH,
R/O- VILLAGE NARAYANGURI,
P.S- GOBARDHANA,
DIST- BAKSA,ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NORTH BLOCK, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSIONER OF INDIA
REP. BY THE COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE COORDINATOR
OF NATIONAL REGISTER OF CITIZENS
O/O THE STATE COORDINATOR NRC ASSAM

ASSAM
1ST FLOOR
ACHYUT PLAZA

G.S ROAD.
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
BAKSA
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
BAKSA
ASSAM

7:OFFICER IN CHARGE
GOBARDHANA POLICE STATION
DIST- BAKSA
ASSA

Advocate for the Petitioner : MS N DEKA

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

04/04/2024

(M.R. Pathak, J)

Heard Ms. H Betala, learned counsel for the petitioner. Also heard Mr. A Kalita, learned Standing counsel, Home Department, Assam for the respondent Nos. 2, 6 & 7; Mr. H Kuli, learned counsel appearing on behalf of Mr. A I Ali, learned Standing counsel, Election Commission of India for the respondent No. 3 and Mr. P Sharma, learned Additional Senior Government Advocate, Assam for the respondent No. 5.

2. In a reference being made by the Superintendent of Police (Border), Barpeta as to whether the petitioner is a foreigner or not, a proceeding being F.T. 9th (BPT) Case No. 764/2018 was initiated against him before the learned Member, Foreigners Tribunal 9th Barpeta, Assam under the Foreigners Act, 1946.

- 3.** The said Tribunal by an ex-parte order dated 29.10.2019 opined the petitioner to be a foreigner under the said 1964 Act of post 1971 stream.
- 4.** Dissatisfied with the same, the petitioner has filed this writ petition on 21.03.2024 stating that notice was not duly served upon him pertaining to the said F.T. 9th (BPT) Case No. 764/2018 for which the said ex-parte order was passed.
- 5.** It is also submitted on behalf of the petitioner that had the notice of the said case been served upon him, he would have appeared before the Tribunal to prove his nationality.
- 6.** We have gone through the ex-parte order dated 29.10.2019 passed by the learned Member, Foreigners Tribunal 9th Barpeta in F.T. 9th (BPT) Case No. 764/2018 impugned in this writ petition.
- 7.** On perusal of the same, we have seen that the Tribunal itself in the said impugned ex-parte order dated 29.10.2019 observed that the report of the process server reveals that notice could not be served as the proceedee was not found in the locality which was supported by a certificate of the concerned Gaonburha, wherein the concerned Gaonburha noted that though the proceedee was an inhabitant of the locality he was not found available.
- 8.** Considering the said report of the Gaonburha and the report on the notice that was issued by it, the Tribunal came to the conclusion that the proceedee had left the place without intimation to the concerned authority. As such, on the basis of the report of the process server and the said certificate of the Gaonburha concerned, the Tribunal proceeded with the case and passed the impugned ex-parte order dated 29.10.2019.
- 9.** The petitioner has now become aware of the said F.T. 9th (BPT) Case No. 764/2018, wherein though notice was issued to the petitioner by the Foreigners Tribunal 9th Barpeta but it was not duly served for which he could not appear in the matter, as noted above.
- 10.** After hearing the learned counsels for the parties, we are of the view that the notice of the said case was not served as specified under Order 3 (5) of the Foreigners (Tribunal) Order, 1964 and therefore, we set aside the impugned ex-parte order dated 29.10.2019 passed by the learned Member, Foreigners Tribunal 9th Barpeta in F.T. 9th (BPT) Case No. 764/2018 directing the petitioner to appear before the Foreigners Tribunal 9th Barpeta in said F.T. 9th (BPT) Case No. 764/2018 on

01.05.2024 along with the certified copy of this order.

11. However, it is made clear that on the said date, i.e., 01.05.2024, the petitioner, namely, Md. Khamal Azad @ Kalam Azad @ A Kalam Azad @ A Kalam in said F.T. 9th (BPT) Case No. 764/2018 shall file his written reply and evidence on affidavit along with the relevant documents to prove his nationality as required under the Foreigners Act, 1946 as well as the Citizenship Act, 1955.

12. Failure on the part of the petitioner to appear before the said Tribunal in said F.T. 9th (BPT) Case No. 764/2018 on 01.05.2024 and to file his written reply as well as evidence on affidavit and documents that he relies on to prove his nationality by the said date, the Foreigners Tribunal 9th Barpeta shall be at liberty to proceed in accordance with law.

13. With the above observation and direction, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant