

GAHC010065792018



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

Case No. : WP(C)/1533/2018

MAJOR ALI
REPRESENTED BY HIS BROTHER MD. AZAD ALI
S/O-LATE ABU TALEB
R/O- VILL-MIRIHOLA
MOUZA-SOOTEA
PO- TEWARIPAL
PS-SOOTEA

VERSUS

THE UNION OF INDIA AND 6 ORS. (H)
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6
3:THE DEPUTY COMMISSIONER
SONITPUR
TEZPUR
SONITPUR
ASSAM
4:THE DEPUTY COMMISSIONER
BISWANATH
ASSAM
5:THE SUPERINTENDENT OF POLICE
SONITPUR
TEZPUR

ASSAM
6:THE SUPERINTENDENT OF POLICE
BISWANATH
BISWANATH CHARIALI
ASSAM
7:THE OFFICER-IN-CHARGE
BISWANATH CHARIALI
BISWANATH CHARIALI POLICE STATION
ASSAM

Advocate for : MR. N N JHA
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 6 ORS. (H)

Linked Case : **WP(C)/2051/2018**

MAJOR ALI
S/O. LT. ABU TALEB, VILL. MIRIHOLA, UNDER KOTORATI REVENUE
VILLAGE, MOUZA SOOTEA, P.O. TEWARIPAL, P.S. SOOTEA, DIST.
SONITPUR, ASSAM (PERSON OF UNSOUND MIND), REP. BY HIS BROTHER
MD. AZAD ALI, S/O. LT. ABU TALEB, VILL. SIPORIA CHAPORI (KOTORATI),
P.S. SOOTEA, DIST. SONITPUR, ASSAM.

VERSUS

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

2:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.

3:THE DY. COMMISSIONER

SONITPUR
TEZPUR
ASSAM

4:THE DY. COMMISSIONER

BISWANATH
ASSAM

5:THE SUPDT. OF POLICE

SONITPUR
TEZPUR
DIST. SONITPUR
ASSAM

6:THE SUPDT. OF POLICE

BISWANATH POLICE DISTRICT
BISWANATH CHARIALI
DIST. BISWANATH
ASSAM

7:THE OFFICER IN CHARGE

BISWANATH CHARIALI POLICE STATION
DIST. BISWANATH
ASSAM

Advocate for the Petitioner : MR. N N JHA

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

28/02/2024

(Sanjay Kumar Medhi, J)

Heard Sri N N Jha, learned counsel appearing for the petitioner. Also heard Ms. A Verma, learned Standing counsel, Home Department, Assam for the respondent Nos. 2, 5, 6 & 7 and Sri P Sharma, learned Additional Senior Government Advocate, Assam for the respondent Nos.3 & 4.

2. Both these writ petitions being connected are disposed of by this common order.

3. The petitioner was a proceedee in F.T. Case No. 321/2016 before the learned Member, Foreigners Tribunal 6th Tezpur, Sootea.

4. As per the projected case of the petitioner, after filing of the written statement, an application was filed before the learned Tribunal, whereby it was informed that the petitioner was suffering from mental ailment and accordingly, a prayer was made to defer the proceedings. The aforesaid petition was however rejected by the learned Tribunal vide an order dated 07.02.2018 and the said rejection is the subject matter of the first writ petition, i.e., WP(C) No. 1533/2018.

5. In the meantime, the Tribunal went ahead with the proceedings and disposed of the same vide a final opinion/order dated 21.03.2018, whereby it was opined that the petitioner was a foreigner/illegal migrant and accordingly consequential directions were given. The said opinion dated 21.03.2018 is the subject matter of the second writ petition, i.e., WP(C) No. 2051/2018.

6. During the course of proceedings, instructions were sought for by this Court and in this regard, written communications received by the learned Standing counsel were placed on record. The said communications which are of the year 2018 had indicated that on examination, the petitioner was found to be conscious, alert and co-operative and only his mood was found to be depressed. It was also stated that there had been irregular past psychiatric treatment and accordingly further evaluation was advised. The reports also indicate that due to non cooperation of the petitioner, further assessment process could not be completed by the clinical psychologist.

7. After filing of the second writ petition, i.e., WP(C) No. 2051/2018, this Court had called for a fresh report from the concerned authorities. Accordingly, a report dated 20.12.2023 has been furnished as per which, the petitioner was found to have clinically improved and was discharged on 16.12.2023 with advise to continue regular medication and periodic follow up.

8. We have noted that the present age of the petitioner would be around 41 years.

9. After consideration of the materials on record, particularly the written instructions which were obtained from the concerned authorities, we are of the opinion that at the relevant point of time, it appears that the petitioner had some mental ailment for which he was not able to defend himself properly. The said reports were however of the year 2018. The recent report of 20.12.2023 has however stated regarding the clinical improvement of the petitioner and the fact of his discharge on 16.12.2023.

10. Taking the aforesaid facts and circumstances in the consideration, we are of the opinion that interest of justice would be served if a proper opportunity is granted to the petitioner to defend himself in the aforesaid F.T. Case. Accordingly, the ex parte order dated 21.03.2018 passed by the

learned Member, Foreigners' Tribunal-6 Tezpur (Assam) in Case No. FT C (6) 321/2016 is set aside.

11. Since the petitioner had participated to the stage of filing of written statement and no documents were also filed, we direct the petitioner to appear before the learned Member, Foreigners' Tribunal-6 Tezpur (Assam) on or before 15.03.2024 to file the documents as well as the evidence-on-affidavit along with a certified copy of this order. On such appearance, the learned Tribunal would take charge of the matter and proceed with the same in accordance with law.

12. Let a copy of this order be transmitted to the learned Tribunal for doing the needful in terms of the direction made in this order.

13. Both the writ petitions accordingly stand disposed of.

14. The interim order, if any, stands merged with this final order.

15. The communications of the authorities regarding the health condition of the petitioner which were placed before the Court be made part of the record.

JUDGE

JUDGE

Comparing Assistant