

GAHC010109572024



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

Case No. : WP(C)/2872/2024

SATTAR ALI MANDAL
SON OF LATE BENGU MANDAL, PERMANENT RESIDENT OF VILLAGE-
GAMARIGURI, POST OFFICE- GOBARDHANA, POLICE STATION- BARPETA
ROAD, DISTRICT- BARPETA (ASSAM), PIN- 781315

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN- 110001

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI- 110001

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006

4:THE DEPUTY COMMISSIONER
BARPETA
ASSAM
781301

5:THE SUPERINTENDENT OF POLICE (B)
BARPETA
ASSAM
781301

6:THE COORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGHAR
GUWAHATI-0

Advocate for the Petitioner : MR A W AMAN

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

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 15/07/2024
Suman Shyam, J

Heard Mr. Z. Abbas, learned counsel for the petitioner. We have also heard Mr. U.K. Goswami, learned CGC, appearing for the respondent no. 1; Mr. A. I. Ali, learned Standing Counsel, ECI, appearing for the respondent no. 2, Mr. R. Talukdar, learned Government Advocate, Assam, representing the respondent no.4 and Mr. G. Sarma, learned Standing Counsel, Home Department, Assam, appearing for the respondent nos. 3 & 5.

This writ petition has been preferred against the exparte opinion dated 16/10/2019 rendered by the learned Member, Foreigners Tribunal No. 10, Barpeta, in connection with FT Case No. 307/2017, whereby, the petitioner has been declared to be a foreigner of post 1971 stream due to his failure to establish his citizenship claim.

It appears that notice in connection with the proceeding was duly served upon the petitioner. Thereafter, he had appeared and sought time before the learned Tribunal on at least 6 (six) occasions, to file written statement but failed to do so. Consequently, the learned Tribunal had fixed the matter for exparte disposal and eventually, by the impugned order

dated 16/10/2019, declared the petitioner to be a foreigner.

Mr. Abbas submits that the petitioner could not submit his written statement due to want of certain vital documents, which the petitioner could collect only on a subsequent date. According to Mr. Abbas, the aforesaid documents would be sufficient to establish the claim of citizenship of the petitioner and, therefore, if an opportunity is not granted to the petitioner to file his written statement and contest the proceeding, the same would lead to serious prejudice to the interest of the petitioner.

After going through the records, we find that the learned Tribunal had granted sufficient opportunities to the petitioner to appear and file written statement. Notwithstanding the same, the petitioner had failed to file written statement. Viewed from that angle, we cannot find fault with the learned Tribunal in passing the impugned ex-parte order dated 16/10/2019. However, what is to be borne in mind is that, claim of citizenship is a very serious matter and unless there are compelling reasons, an order declaring a person to be a foreigner, ought not to be allowed to be sustained merely on account of default on the part of the proceedee to contest the reference by filing written statement.

Therefore, although we do not find any fault with the approach of the learned Member, Foreigners Tribunal in the matter, yet, considering the seriousness of the issue and the consequence that may ensue upon the petitioner due to the impugned opinion, for the ends of justice, we are inclined to grant one opportunity to the petitioner to establish his citizenship claim before the Foreigners Tribunal.

Facilitating the above, we set aside the impugned opinion dated 16/10/2019. The petitioner is directed to appear before the learned Foreigners Tribunal within 30(thirty) days

from today, along with his written statement, complete in all respect including the supporting documents, and also a certified copy of this order.

Subject to compliance of this order, the written statement filed by the petitioner may be taken on record in the original case record and the reference case be decided afresh on merit.

It is, however, made clear that if the petitioner fails to comply with our order and file his written statement along with all supporting documents within 30 days from today, this order shall automatically stand revoked. Consequently, the order dated 16/10/2019 shall revive with full force.

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

Registry to send back the LCR, as expeditiously as possible.

JUDGE

JUDGE

sukhamay

Comparing Assistant