

GAHC010151392017



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

Case No. : WP(C)/7517/2017

SOIDUR RAHMAN @ SAHIDUR RAHMAN
S/O- LT SHAHAR ALI SK @ SHAHAR ALI @ SHAHAR VILL- TALLI PART-I
P.S.-GOLAKGANJ DIST- DHUBRI ASSAM

VERSUS

THE UNION OF INDIA and 3 ORS.
REPRESENTED BY ITS SECRETARY OF THE MINISTRY OF HOME AFFAIRS,
UNION OF INDIA, NEW DELHI

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

3:THE DEPUTY COMMISSIONER

OF DHUBRI DISTRICT
AT DHUBRI
P.O.
P.S. and DIST. DHUBRI
ASSAM

4:THE SUPERINTENDENT OF POLICE BORDER
OF DHUBRI DISTRICT
AT DHUBRI
P.O.
P.S. and DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR.M HUSSAIN, MR.A ZAHID,MR.D BARMAN,MR.K RAHMAN

Advocate for the Respondent : , ASSTT.S.G.I.,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

26.11.2024

(K.R. Surana, J)

Heard Mr. K. Rahman, learned counsel for the petitioner. Also heard Ms. J. Sarma, learned CGC, appearing for the respondent No.1; Mr. J. Payeng, learned Standing Counsel, Foreigner's Tribunal, for the respondent Nos. 2 and 4; Mr. P. Sarmah, learned Additional Government advocate appearing for the respondent No.3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned order dated 31.10.2017, passed by the learned Member, Foreigner's Tribunal No.10th, Dhubri in FT Case No. FT (10)/AGM/552/2017 arising out of Reference FT Case No. 4524/ GKJ/II and Reference IM (D) T Case No. 4224/1998, declaring the petitioner as a foreigner who has entered India illegally after 25.03.1971.

3. Apart from few points on which the impugned opinion has been assailed, it is also projected that the reference made by the Superintendent of Police (Border), Dhubri, did not alleged the petitioner to be a foreigner of post 25.03.1971 stream. Accordingly, it is also projected that the Tribunal would not

have jurisdiction to adjudicate the issue in the absence of any specific reference against the petitioner to be a foreigner.

4. On the said issue, the learned Standing Counsel for the FT matters has submitted that the first order dated 21.12.2017, passed by the learned Tribunal discloses that the records were received pursuant to the directions issued by this Court by order dated 06.12.2017. It is submitted that thereafter the matter was listed before the learned Tribunal on 14.07.2017 and the learned Member had recorded that the referred case has received from F.T. No.2, Dhubri and it was observed that the ERO's report under Annexure-B was missing from the referral authorities documents. Accordingly, it is submitted that this is a case where the initial reference was taken up by the Illegal Migrants (Determination) Tribunal and subsequently, the matter was transferred to the Foreigner's Tribunal No. 10th, Dhubri for adjudication.

5. Accordingly, it is submitted that that there was a strong presumption that the referral authority's report, vide Annexure- B of the ERO, would have contained a note suspecting the petitioner to be a foreigner of post 25.03.1971 stream. It is further submitted that as the reference was adjudicated by the learned Foreigner's Tribunal, the mere absence of a note by the Superintendent of Police in the reference that the petitioner is suspected of being a foreigner of post 25.03.1971, would not come in the way of the Court to decide the legality of the opinion impugned in this writ petition.

6. We have gone through the original records received from the learned Tribunal. In the form for reference, against Column No.7 and against the query "does the person's name appear in electoral rolls prepared prior to 25 days of March 1971 if so details.", the note of the Superintendent of Police (Border),

Dhubri as follows:

“E/O’s report that serial No.1’s others name is in 1951 NRC vide serial No.2, House No.-40 House Hold No.-18 PS. Gkg.” (Gkg indicates Golakganj).

7. Against Column No.11 containing in query “Grounds for having reasonable doubts that person’s concerned is an illegal Migrants”, the note of the Superintendent of Police states that- “as stated in Column No. 7”.

8. In the said form of reference, the copy of the Police diary and format for verification Officers report vide Annexure-A, has been enclosed. However, there is no note from the Local Verification Officer suggesting that the petitioner is a foreigner of post 25.03.1971 stream. As indicated above, the Form-B is not found available.

9. At page-3 of Annexure-A, there was a following note- seen “LVO’s report proceeding dropped. sd/- (illegible) 11.10.1997”.

10. Under the circumstances, when in the contents of the Annexure- A of the Local Verification Officers report, it is mentioned that the proceeding was dropped, there is no record of how the matter came to be referred to the learned Tribunal. It is a settled law that the Foreigner’s Tribunal would get jurisdiction to render its opinion only when there is a valid reference before it.

11. In the present case in hand, the record does not disclose that there was any valid reference against the petitioner. In view of the note appended to Annexure-A of the Local Verification Officers Report. Seen LVO’s Report proceedings dropped. Thus, the records do not reveal that there is any material on record to suggest that the petitioner is an alleged foreigner, on the basis of which a reference can be made by the Referral Authority to the Tribunal. A

similar view was taken by the coordinate Bench of this Court in the case of *Mayman Bibi Vs The Union Of India and Ors*; WP(C) No. 2986/2018, which was decided on 12.11.2021. In the decision of the Full Bench of this Court, in the Case of *The State of Assam and Ors Vs Moslem Mondal 2013(1), GLT 809*, it was held in paragraph-98 thereof, that the reference by the referral authority cannot be mechanical. The referral authority has to apply his mind on the basis of which was collected by the Investigating Officer during the investigation and made the reference on being satisfied that there are grounds for making such reference. The referral authority, however, is not required to pass a detailed order to record its satisfaction and a record of being aggrieved with the investigation/ enquiry would suffice. Moreover, it has been held that the referral authority while making the reference is required to produce all the materials collected during the investigation before the learned Tribunal, as the Tribunal is required to *prima facie* satisfy itself about the main ground before issuing the notice to the proceedee.

12. In the present case, the LVO's report vide Annexure-A, as well as the Form of Reference by the Superintendent of Police (Border) Dhubri, does not disclose any materials regarding the existence of the main grounds for referring the matter for adjudication as to whether the petitioner is a foreigner of post 25.03.1971. Moreover, the order sheet of the learned Tribunal does not disclose that any exercise was undertaken by the Tribunal to *prima facie* record its satisfaction that the proper reference has been made.

13. Under such circumstances, the Court is compelled to allow this writ petition by setting aside the impugned opinion dated 31.07.2017, passed by the learned Member, Foreigner's Tribunal No.10th, Dhubri in FT Case No. FT

(10)/AGM/552/2017 arising out of Reference FT Case No. 4524/ GKJ/II and Reference IM (D) T Case No. 4224/1998

14. At this stage, the learned Standing Counsel for the FT matters has submitted that the matter be referred either to the Tribunal or Superintendent of Police (Border), Dhubri. Considered the said prayer. We find no ground or reason to remand the matter back to the Foreigner's Tribunal as no doubt has been raised about the petitioner being referred as a Foreigner. Moreover, as the Court is exercising the certiorari jurisdiction, the Court does not find that it would be appropriate to remand the matter to the Superintendent of Police (Border), Dhubri.

15. However, in the event after thorough investigation, the competent authority arrives at a conclusion that the petitioner is not a citizen of India, neither this order nor the impugned opinion dated 31.10.2017, would come in the way of the said authority to make a valid reference, if so advised.

16. The writ petition stands allowed to the extent as indicated above.

17. Let the records of the Tribunal be sent back

18. The learned Standing Counsel for the FT matters shall communicate a copy of this order to the jurisdictional Superintendent of Police (Border), Dhubri.

JUDGE

JUDGE

Comparing Assistant