

GAHC010188682024



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

Case No. : WP(C)/4702/2024

NAZRUL ISLAM
S/O- LATE RAHIJ UDDIN,
VILLAGE- GHILAJHARI JOYPUR,
P.O AND P.S- HOWLY,
DIST- BARPETA, ASSAM PIN-781916

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, SASTRI
BHAWAN, NEW DELHI- 110001.

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
DIST- BARPETA
ASSAM
PIN-781301

4:THE SUPERINTENDENT OF POLICE (B)
DIST- BARPETA
ASSAM
PIN-781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

6:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-32

DIST- KAMRUP (M

Advocate for the Petitioner : MR. A M AHMED, B DAS,P. GHOSH,MRS S RAHANA

Advocate for the Respondent : DY.S.G.I., GA, ASSAM,SC, ECI,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

04.12.2024

(K.R. Surana, J)

Heard Mr. A.M. Ahmed, learned counsel for the petitioner. Also heard Mr. U.K. Goswami, learned CGC representing respondent no.1, Mr. G. Sharma, learned Standing Counsel for the Home Department and FT matters

representing respondent nos. 2, 4 and 6; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned Standing Counsel for ECI representing respondent no.5; and Mr. H.K. Hazarika, learned Govt. Advocate representing respondent no.3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the *ex parte* opinion dated 10.04.2023, passed by the learned Member, Foreigners' Tribunal, Bajali, in F.T. Case No. 1765/2018, declaring the petitioner as a foreigner who has entered India illegally after 25.03.1971 stream.

3. The learned counsel for the petitioner has submitted that the petitioner had appeared in the proceedings through his engaged counsel and filed his written statement as well as his evidence-on-affidavit. However, due to poverty, he could not provide fees to his engaged counsel and therefore, his engaged counsel had withdrawn from the case. Resultantly, an *ex parte* opinion was passed by the learned Tribunal. It is submitted that one opportunity be granted to the petitioner to contest the said proceedings by appearing for his cross-examination and to take such other steps as the petitioner may be so advised.

4. The learned Standing Counsel for the FT matters has referred to the order-sheet of the learned Tribunal and has submitted that the petitioner had filed his written statement on 25.02.2022 and after few adjournments, the evidence-on-affidavit was filed on 18.08.2022 along with photocopies of various documents. However, the petitioner remained absent when the matter listed on 22.09.2022, 28.10.2022, 14.11.2022, 15.12.2022, 06.01.2023, 09.02.2023, 27.02.2023, 23.03.2023, 31.03.2023. In the meanwhile on 23.03.2023, the

learned counsel for the petitioner was permitted to withdraw his vakalatnama and thereafter, the matter was fixed on 31.03.2023 for passing *ex parte* opinion. However, his opinion was not ready on the fixed date, the matter was listed on 10.04.2023 and the opinion was pronounced.

5. Accordingly, it is submitted that more than reasonable opportunity was given to the petitioner to contest the proceedings and that the petitioner had willfully defaulted to participate in the proceedings by facing cross-examination and failed to exhibit the original of the relevant documents. Accordingly, by facing reliance on the following cases, viz.

(i) *WP(C) 8361/2019, Ijjat Ali v/s Union of India, decided on 12.10.2020.*

(ii) *WP(C) 1293/2020, Sajiran Nessa v/s Union of India, decided on 05.01.2021.*

(iii) *Baten Paramik v/s Union of India (2024) 0 Supreme (Gau) 48 and Kadh Bhanu Begum v/s Union of India, (2016) 4 GLR 182.*

6. Accordingly, it has been submitted that due to willful default and negligence on the part of the petitioner to participate in the proceedings, no interference is called for in respect of the impugned opinion.

7. It is submitted that the explanation of delay had submitted in the writ petition is devoid of any merit because the photocopy of the certified copy of the impugned opinion at Annexure-15 of this writ petitioner discloses that the certified copy of the opinion was collected by the petitioner on 22.12.2023 and there is no explanation at all for the delay in filing this writ petition on 10.09.2024. It is also submitted that the petitioner's poverty is *ex facie* has no merit because it appears from Annexure-12 to the writ petition that the petitioner has inherited a plot of land from his projected father.

8. Examined the materials available on record and also considered the submissions as well as the cases cited at the Bar.

9. Although there is no quarrel with the ratio laid down in the cases cited by the learned Standing Counsel for the FT matters, but the Court is compelled to take notice of the fact that in various petitions filed by his learned counsel from time to time, certain reasons were assigned and most of them disclose regarding non-appearance due to the illness of the petitioner. On 15.12.2022 and 06.01.2023, the learned counsel for the petitioner has projected that the petitioner is not cooperative with the counsel and was not communicating with them. Thereafter, on 23.03.2023, petition was filed to the effect that the petitioner was not cooperating with the engaged counsel since last 4-5 months and accordingly, prayer was made to allow the learned counsel to withdraw vakalatnama. The record does not disclose that the learned counsel, who was holding the brief for the petitioner before the Foreigners' Tribunal, had given any advance notice either in writing or through mobile communication that they would be withdrawing their vakalatnama so as to give sufficient notice to the petitioner to make an alternative arrangement.

10. No doubt that a lawyer would have liberty to withdraw the vakalatnama for an appropriate reason but he is required to put the petitioner to notice about such withdrawal of vakalatnama.

11. It is also seen that the learned Foreigner's Tribunal had mechanically accepted the petition dated 23.03.2023, without ascertaining and/or recording its satisfaction that the petitioner was put to notice that his advocates were withdrawing vakalatnama.

12. Under the aforesaid circumstances, the Court is of the considered opinion that on payment of cost, the petitioner be granted one opportunity to contest the proceedings before the learned Foreigner's Tribunal (10th) Barpeta, Bajali.

13. Accordingly, as a condition precedent for the interference with the *ex parte* opinion dated 10.04.2023, impugned in this writ petition, the following directions are issued :

a) It is provided that the petitioner, namely, Nazrul Islam, who is the proceedee in F.T. Case No. 1765/2018, shall deposit cost of Rs.10,000/- (Rupees ten thousand only) before the Secretary, District Legal Services Authority, Bajali within 15 (fifteen) days from the date of this order and shall produce the same before the learned Member, Foreigner's Tribunal, Bajali.

b) Furthermore, within 15 (fifteen) days from the date of this order, the petitioner shall also appear before the Superintendent of Police (Border), Barpeta, the authority who had made the reference against the petitioner, and on such appearance he shall furnish a bail bond of Rs.5000/- (Rupees five thousand only) along with one surety of like amount to the satisfaction of the said authority.

c) However, as the district of Bajali has been created after the reference was made, it is provided that in the event the relevant records has since been transferred to the Superintendent of Police (Border), Bajali, in that event, the petitioner shall appear before the Superintendent of Police (Border), Bajali for the purpose of bail on terms as referred in the

preceding sub-paragraph.

d) Further, the Superintendent of Police (Border), Barpeta, Bajali is directed that on appearance of the petitioner within the period indicated above, the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner shall be obtained, whereafter, he shall be allowed to remain on bail.

14. However, in the event the petitioner does not appear before the jurisdictional Superintendent of Police (Border), and to take bail or fails to appear before the learned Member, Foreigners' Tribunal, Bajali, within the time allowed, this order would be deemed to have spent force and accordingly, this conditional order would stand lapsed by efflux of time and it would be deemed as if as there is no interference by this Court with *ex parte* opinion dated 10.04.2023, passed by the learned Member, Foreigners' Tribunal, Bajali, in F.T. Case No. 1765/2018 and the said opinion shall stand restored to file.

15. However, in the event the petitioner appears before the Superintendent of Police (Border), Barpeta and/or the jurisdictional Superintendent of Police (Border), having records of the reference referred above, the aforesaid *ex parte* opinion dated 10.04.2023, passed by the learned Member, Foreigners' Tribunal, Bajali, in F.T. Case No. 1765/2018 shall stand set aside. Resultantly, the matter would stand remanded back to the said learned Tribunal for a fresh opinion in a time bound manner accordance with law after giving reasonable opportunity to the petitioner to face cross-examination and to take such other steps as he may be so advised.

16. Accordingly, it is once again clarified that the interference with the impugned opinion is conditional and subject to conditions as referred above.

17. Accordingly, the writ petition stands allowed to the extent as indicated above.
18. Let the records be sent back expeditiously.

JUDGE

JUDGE

Comparing Assistant