

GAHC010191452019



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

**Case No. : WP(C)/6924/2019**

ABDUL HAQUE  
S/O. ANOWAR, VILL. 76, MKCR, NO.1, BEPARIPARA, P.S. MANKACHAR,  
DIST. SOUTH SALMARA MANKACHAR, ASSAM.

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA  
REP. BY CHIEF ELECTION COMMISSIONER NIRCACHAN SADAN  
ASHOKA ROAD  
NEW DELHI-110001.

3:THE STATE OF ASSAM

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM  
HOME DEPTT.  
DISPUR  
GUWAHATI-06.

4:THE DY. COMMISSIONER

SOUTH SALMARA KANKACHAR  
HATSINGMARI.

5:THE ASSAM STATE COORDINATOR OF NRC

BHANGAGARH GUWAHATI-781005  
ASSAM.

6:THE SUPDT. OF POLICE (B)

SOUTH SALMARA MANKACHAR  
HATSINGMARI

**Advocate for the Petitioner** : MR I RAFIQUE

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

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**ORDER**

**12.02.2024**

**S.K. Medhi, J.**

Heard Mr. I Rafique, learned counsel for the petitioner and Mr. AI Ali, learned Standing Counsel, Election Commission of India. Also heard Mr. J Payeng, learned Standing Counsel, Home Department, Assam for the respondent Nos. 3 and 6 as well as Mr. HK Hazarika, learned Addl. Sr. Government Advocate, Assam for the respondent No. 4.

2. On being referred by the Superintendent of Police (Border), Dhubri, the learned Member, Foreigners Tribunal, No.3<sup>rd</sup>, Dhubri in FT Case No. 936/MKCR/11 vide the impugned *ex-parte* final order dated 19.05.2018 declared the petitioner to be a foreigner under the Foreigners Act, 1946, who had illegally entered into India (Assam) on or after 25.03.1971 from the specified territory of Bangladesh.

3. Dissatisfied with the said impugned *ex-parte* final order dated 19.05.2018, the petitioner has filed this writ petition on 08.08.2019 stating that he was not

aware of the said *ex-parte* final order, as the notice of said FT Case No. 936/MKCR/11 was not served upon him.

4. It is also contended by the petitioner that he did not receive any notice.

5. Perused the record of said FT Case No. 936/MKCR/11 in original, that was called for vide order dated 03.09.2021.

6. On perusal of the record, we have seen that the notice of said FT Case No. 936/MKCR/11 was issued to the proceedee (the present petitioner) on 03.06.2017 vide issue No. 2170/FT 3<sup>rd</sup>/HSM in the address — Abdul Haque, son of Anowar, Village – No. 1 Barmanpara, P.S.-Mankachar, District – South Salmara. Mankachar and on his visit to the village mentioned in the notice, the concerned process server did not find the proceedee and accordingly, time was sought for to effect such service. Thereafter, it appears that vide order dated 14.06.2017, after perusal of the report of the process server dated 13.06.2017, notice was re-issued, fixing 28.06.2017. Thereafter, the Tribunal was not functioning due to non-availability of the Member since 28.06.2017 to 13.04.2018 and a number of dates were given. However, vide order dated 09.05.2018, the learned Member came to a finding that notice was served properly to the OP (i.e. the petitioner herein) who, however, has not appeared and accordingly, the matter was fixed for *ex-parte* hearing on 19.05.2018.

7. Accordingly, the learned Foreigners Tribunal, No.3<sup>rd</sup>, Dhubri on 19.05.2018 had passed an *ex-parte* opinion holding the proceedee (the petitioner) to be a foreigner.

8. Order 3(5) of the Foreigners (Tribunals) Orders, 1964 relates to service of notice to a proceedee in a case relating to the Foreigners' Act, 1946. The Full Bench of this Court in the case of ***State of Assam & Ors. Vs. Moslem Mondal & Ors.***, reported in **2013 (1) GLT 809**, decided on 03.01.2023, at para 102 also laid down the procedure regarding service of notice on a proceedee/opposite party in a Foreigners' Tribunal Case applicable to all the proceedings pending before such Tribunal where notices are either yet to be issued or issued but not yet served.

9. On perusal of the said report of the concerned process server dated 13.06.2017, we have found that the notice of the said FT Case No. 936/MKCR/11 issued by the Foreigners Tribunal, Dhubri, was not served on the petitioner/proceedee, in terms of the provisions as specified under Order 3(5) of the Foreigners (Tribunals) Orders, 1964 as well as decision of the Full Bench of this Court in the case of ***Moslem Mondal (supra)***.

10. Accordingly, we set aside the impugned *ex-parte* Final Order dated 19.05.2018 passed by the learned Member, Foreigners Tribunal, No.3<sup>rd</sup>, Dhubri in FT Case No.936/MKCR/11.

11. Since the petitioner has now come to know about the proceeding of said FT Case No. 936/MKCR/11, he shall now appear before the learned Member of the concerned Foreigners Tribunal on **01.03.2024** along with a certified copy of this order.

12. We are informed that the matter would now come under the jurisdiction of the learned Foreigners Tribunal, South Salmara, Mankachar. Therefore, the matter be remanded to the learned Foreigners Tribunal, South Salmara, Mankachar. On his appearance, as directed above, the petitioner shall file his Written Statement along with the Evidence-in-Affidavit in said FT Case on the said date i.e., on 01.03.2024. Thereafter, the petitioner shall regularly appear in the said FT Case No.936/MKCR/11 on the dates so fixed by the learned Foreigners Tribunal till its disposal. Such disposal be done within the time as prescribed under the Foreigners' Act, 1946.

13. However, we make it clear that failure on the part of the petitioner to appear before the Foreigners Tribunal, South Salmara, Mankachar in said FT Case as directed above, the said Foreigners Tribunal concerned shall be at liberty to dispose of the said FT Case No. 936/MKCR/11 in accordance with law.

14. With the above observations and directions, this writ petition stands allowed.

15. Registry shall send back the record of FT Case No.936/MKCR/11 forthwith to the Foreigners Tribunal, South Salmara, Mankachar, Assam, along with a copy of this order.

***JUDGE***

***JUDGE***

**Comparing Assistant**