

GAHC010193872024



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

Case No. : WP(C)/4891/2024

ANOWAR HUSSAIN @ ANAR HUSSAIN
S/O- LATE SARBESH ALI @ SABBESH ALI, RESIDENT OF VILLAGE-
DIMAPUR, P.O. KALGACHIA, P.S. KALGACHIA, DISTRICT- BARPETA,
ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, SHASTRI BHAWAN, NEW DELHI- 1

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
BARPETA
P.O. AND DISTRICT- BARPETA
ASSAM
PIN- 781301

4:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND DISTRICT- BARPETA
ASSAM
PIN- 781301

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI
TO BE REPRESENTED BY CHIEF ELECTION COMMISSIONER OF INDIA
NEW DELHI-1

6:THE STATE COORDINATOR OF NATIONAL REGISTRATION
ASSAM
BHANGAGARH
LACHIT NAGAR
GUWAHATI-5

7:THE OFFICER-IN-CHARGE
SORBHOG POLICE STATION
P.O. SORBHOG
DISTRICT- BARPETA
ASSAM
PIN- 78131

Advocate for the Petitioner : MR. N HAQUE, MR M HUSSAIN,MR. A K AZAD,MR. S R
BARBHUIYA

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 24.10.2024
(K.R. Surana, J)

Heard Mr. P.K. Roychoudhury, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned CGC for respondent nos.1 and 6; Mr. J. Payeng, learned standing counsel for the respondent nos.2, 4 and 7; Mr. P. Sarma, learned Govt. Advocate appearing for respondent no.3; and Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for the respondent no.5.

2. The petitioner has filed this writ petition under Article 226 of the Constitution of India seeking interference with the opinion dated 23.03.2018, passed by the learned Member, Foreigners Tribunal No.8th, Barpeta in FT Case No. 74/2018, *inter alia* on the ground that he is not the proceedee, and on the ground that the notice was not served in accordance with para 3(5)(f) of The Foreigners (Tribunal) Order, 1964 ("1964 Order" for short). It is also submitted that in the meanwhile, the petitioner has been detained on 02.09.2024 pursuant to the said *ex parte* opinion and is presently lodged at Matia Detention Camp, Goalpara.

3. Per contra, the learned standing counsel for the Home Department has opposed the prayer made in this writ petition in respect of the ground taken that the petitioner is not the proceedee. However, he has fairly submitted that the service of notice was not in accordance with paragraph 3(5)(f) of the 1964 Order.

4. On a perusal of the records of the learned Tribunal, as produced by the learned standing counsel for the Home Department, it is seen that the process server has returned the process on the ground that the petitioner has left the village along with family. Moreover, in support of the said stand, a certificate of the *Lot Gaonbura*, without bearing any date, is also made a part of record, indicating that the petitioner has left the village.

5. The requirement of the provision of paragraph 3(5)(a) and 3(5)(f) of the 1964 Order are as follows:

"3(5)(a) The notice shall be served at the address where the proceedee last resided or reportedly resides or works for gain, and in case of change of place or residence,

which has been duly intimated in writing to the investigating agency by the alleged person, it shall be served at such changed address by the Foreigners Tribunal;

* * *

3(5)(f) If the proceedee has changed the place of residence or place of work, without intimation to the investigating agency, the process server shall affix a copy of the notice on the outer door or some other conspicuous part of the house in which the proceedee ordinarily resides or last resided or reportedly resided or personally worked for gain or carries on business, and shall return the original to the Foreigners Tribunal from which it was issued with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed."

6. Accordingly, it appears that the prescription of the provision of paragraph 3(5)(f) of the 1964 Order is that even if the proceedee may have left the village without intimation to the investigating agency, the process server is required to affix a copy of the notice on the outer door or some other conspicuous part of the house in which the proceedee ordinarily last resided.

7. The said procedure as prescribed under para 3(5)(f) of the 1964 Order, having not been followed, the service of the notice is held to be improper. Therefore, the Court is of the considered opinion that in order to provide fair chance to the petitioner to defend himself, the matter is required to be remand back to the Foreigners Tribunal No.8th, Barpeta.

8. Accordingly, the Court is inclined to set aside the opinion dated 23.03.2018, passed by the learned Member, Foreigners Tribunal No.8th, Barpeta in FT Case No. 74/2018, arising out of IM(D)T Reference Case No.8527/98.

9. However, taking note of the fact that the petitioner is presently in

detention camp, the Court is inclined to provide that the Superintendent of Police (Border), Barpeta shall secure the attendance of the petitioner, namely, Anowar Hussain @ Anar Hussain from the Matia Detention Camp, Goalpara and on the petitioner furnishing a bail bond of Rs. 5,000/- with one local surety of the like amount to the satisfaction of the said authority, he shall be released on bail. Further, the Superintendent of Police (Border), Barpeta is directed that on appearance of the petitioner before him, the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner shall be obtained. The said authority shall also obtain necessary information and documentation as required under the Rules from the petitioner for securing his presence and thereafter, he shall be produced before the learned Member, Foreigners Tribunal No.8th, Barpeta.

10. The petitioner shall produce a certified copy of this order before the Superintendent of Police (Border), Barpeta within 7 (seven) days from today. On the certified copy of this order being produced before the Superintendent of Police (Border), Barpeta, the said authority shall do the needful so as to enable the concerned jailor/any other competent authority, who is the In-Charge of the Matia Detention Camp, Goalpara to hand over the custody of the petitioner to the Superintendent of Police (Border), Barpeta so as to produce the petitioner before the Foreigners Tribunal No.8th, Barpeta by 4 (four) working days thereafter.

11. In the event the petitioner fails to regularly appear before the learned Tribunal, or fails to cooperate in the proceeding, the learned Tribunal shall be at liberty to pass any order as per law.

12. Accordingly, this writ petition stands allowed to the extent as indicated above.

13. The records produced by the learned standing counsel for the Home Department is returned back.

JUDGE

JUDGE

Comparing Assistant