

GAHC010194502024



AS:11728-DB

2024:GAU-

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

Case No. : WP(C)/4858/2024

MONJUR ISLAM @ MONJUR RAHMAN
SON OF- LATE HAFIJUL HOQUE @ HEBEJUDDIN,
RESIDENT OF VILLAGE- RAYPUR,
P.O.- SIMLAGURI, P.S.- BARPETA ROAD,
DISTRICT- BARPETA, ASSAM, PIN- 781313.

VERSUS

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

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER

NEW DELHI
PIN- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

DEPARTMENT OF HOME
DISPUR
GUWAHATI-6.
PIN NO.- 781006.

4:THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS (NRC)
GOVT. OF ASSAM

DISPUR
GUWAHATI
PIN CODE- 781006.

5:THE DEPUTY COMMISSIONER
BARPETA
P.S.- BARPETA
DISTRICT- BARPETA

ASSAM
PIN- 781301.

6:THE SUPERINTENDENT OF POLICE (BORDER)
BARPETA
P.S. AND DISTRICT- BARPETA
ASSAM

PIN- 781301

Advocate for the Petitioner : MR S ISLAM, MS J MARIYAM,MS. A KAUSHAR

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

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

ORDER

27.11.2024

(K.R. Surana, J)

Heard Mr. S. Islam, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned CGC, appearing for the respondent No.1; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, learned Standing Counsel, Election Commission of India, for the respondent No. 2; Mr. J. Payeng, learned Standing Counsel, FT and Home Department, for the respondent Nos. 3, 4 and 6 and Mr. H. K. Hazarika, learned government advocate appearing for the respondent

No.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned *ex parte* order dated 12.06.2019, passed by the learned Member, Foreigner's Tribunal 9th, Barpeta in F.T. 9th, (BPT) Case No. 817/2018, arising out of Reference IM(D)T Case No. 966/B/1998, declaring the petitioner as a foreigner who has entered India illegally after 25.03.1971.

3. Accordingly, the reference was answered in the affirmative.

4. The learned counsel for the petitioner has referred to the statements made in the paragraph- 24 to 26 of writ petition to project that the petitioner had engaged her counsel to represent him and a handsome amount of money was paid to the learned counsel. However, despite appearance and prayers made for adjournment for filing written statement, the written statement was not filed. It is also projected that the engaged counsel has assured the petitioner that he will do the needful and assured him that he would give the information to him about the fit of this case. It is further projected that on 02.09.2024, the Police arrived at his house and arrested him and thereafter the petitioner has been shifted to the Transit Camp, Matia, Goalpara. Accordingly, it is submitted that the petitioner was not aware that the proceedings against him before the Foreigners' Tribunal had proceeded *ex parte*. It is also submitted that the petitioner has sufficient documents to show that he is not a foreigner from Bangladesh but he is a citizen of the Country. Hence, the learned counsel for the petitioner prays for setting aside the impugned *ex parte* opinion dated 12.06.2019, and grant the petitioner at least one last opportunity to contest the proceedings and for granting bail to the petitioner in the meanwhile.

5. The learned Standing Counsel for the FT matters has opposed the prayer for interference with the impugned *ex parte* opinion of the learned Tribunal as well as in respect of the prayer for bail on the ground that the Tribunal had served notice of the proceedings to the petitioner and instead of filing a written statement, the petitioner has sought adjournment on 05.11.2018, which was the date of his first appearance for which a petition was filed on 05.12.2018, the matter was then adjourned. Thereafter, the petitioner had filed further petitions on 15.02.2019, 07.03.2019, 29.04.2019, 14.05.2019, 03.06.2019, for one reason or the other and the matter was adjourned. Thereafter, *ex parte* opinion was rendered on 12.06.2019. Accordingly, it is submitted that the learned Tribunal had given sufficient opportunity to the petitioner to contest the reference. Accordingly, he also opposes the prayer for bail.

6. Considered the submissions made by the learned counsel for both sides. Also perused the records received by the learned Tribunal which was called for by order dated 23.09.2024, pursuant to which the same was produced by the learned Standing Counsel for the FT matters.

7. In so far as the notice is concerned, it is seen that the notice of the proceedings was duly served on the petitioner. However, despite adjournment being allowed on 4, 5 occasions, the petitioner did not file his written statement. In the absence of any complaint against the learned counsel engaged by the petitioner, the Court cannot find fault with anyone except the petitioner, who had consciously not filed his written statement despite granting him time to do so. Therefore, on merit the petitioner has not been able to make out a case that he was not negligent in appearance in the proceedings before the learned Tribunal.

8. However, as citizenship is an important right, which is in issue before this Court, the Court is of the considered opinion that at least one last opportunity be given to the petitioner to file his written statement to contest the proceedings. Accordingly without finding fault with the manner in which the proceedings was taken up by the learned Member, Foreigner's Tribunal 9th, Barpeta, the impugned *ex parte* opinion dated 12.06.2019 is interfered with and set aside only for the purpose granting one last opportunity to the petitioner to file his written statement positively within the time allowed by this Court or so extended by the learned Tribunal, on compelling circumstances. The said proceedings of Foreigner's Tribunal 9th, Barpeta in F.T. 9th, (BPT) Case No. 817/2018, stands restored to the file of the learned Member, Foreigner's Tribunal 9th, Barpeta.

9. In order to compel the appearance of the petitioner before the learned Tribunal, the Court is not inclined to grant bail to the petitioner. Nonetheless, as the proceedings in F.T. 9th, (BPT) Case No. 817/2018, arising out of Reference IM(D)T Case No. 966/B/1998 is restored back to the file of the learned Member, Foreigner's Tribunal 9th, Barpeta, we deemed it appropriate that within 3 (three) working days (not being a holiday) from furnishing the certified copy of this order before the Superintendent of Police (Border), Barpeta, shall do the needful for production of the petitioner before the said learned Tribunal.

10. On such production, the learned Tribunal shall fix a date preferably within 3 (three) weeks for filing of a written statement by the petitioner before the learned Member, Foreigner's Tribunal 9th, Barpeta. It is further provided that the Superintendent of Transit Camp, Matia, Goalpara, shall authenticate the signature of the petitioner on the written statement.

11. The date when the petitioner proposes to file his written statement shall be intimated to the Superintendent of Police (Border), Barpeta, who would make arrangement for the conveyance and production of the petitioner before the learned Member, Foreigner's Tribunal 9th, Barpeta on such date.

12. On such appearance of the petitioner before the learned Tribunal, and on filing of the written statement, it would be open to the petitioner to apply for bail. The learned Member, Foreigner's Tribunal 9th, Barpeta, shall consider the prayer for bail in terms of paragraph-3 (5) (6) of the Foreigners (Tribunals) Order, 1964, and dispose of the bail application in accordance with law.

13. It is also provided that before the production of the petitioner before the learned Tribunal, Superintendent of Police, (Border) Barpeta, shall do the needful for capturing the biometrics of the iris of both eyes, the fingerprints of both hands, and the photographs of the petitioner shall also be obtained, whereafter, he shall be allowed to remain on bail, if so ordered by the learned Foreigners' Tribunal.

14. Accordingly, this writ petition stands allowed on the terms as indicated above.

15. Let the records of the Tribunal be sent back expeditiously.

JUDGE

JUDGE

Comparing Assistant