



THE GAUHATI HIGH COURT

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

Case No. WP(C)/7309/2019

JONGLU ALI @ JANGLU ALI
S/O LATE HAIDAR ALI @ HAIDER ALI @ HAYDER ALI
RESIDENT OF VILL. AIBHANDAR NO. 2 (AI-BHANDAR PART-II)
BHORAGURI
P.O. KAMALSING
P.S. GOSSAIGAON
DIST. KOKRAJHAR
BTC
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH THE SECRETARY TO THE GOVT. OF INDIA
THE MINISTRY OF HOME AFFAIRS
GRIHA MANTRALAYA
NEW DELHI
PIN- 110001.

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.
3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN BHAWAN
ASHOKA ROAD

NEW DELHI
PIN 110001.
4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GUWAHATI- 781005.
5:THE DEPUTY COMMISSIONER
JORHAT
P.O. AND DIST. JORHAT
ASSAM
PIN- 785001.
6:THE SUPERINTENDENT OF POLICE (BORDER)
JORHAT
P.O. AND DIST. JORHAT
ASSAM
PIN- 785001.

Advocate for the Petitioner : MR. A A R KARIM

**Advocate for the Respondent : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5
ORS.**

BEFORE

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA**

O R D E R

15.05.2024

(Mridul Kumar Kalita, J)

1. Heard Mr. A.R. Sikdar, learned counsel appearing for the petitioner and Mr. K.K. Parasar, learned Central Government Counsel for the respondent No.1, Union of India. Also heard Mr. G. Sarma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2 & 6.

Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent No. 3, as well as Mr. R. Talukdar, learned Government Advocate, Assam for the respondent No.5.

2. This writ petition has been filed by the petitioner, namely, Sri Jonglu Ali @ Md. Janglu Ali impugning the *ex-parte* order, dated 11.03.2010, passed by the learned, Foreigners Tribunal, Jorhat in Case No. JFT. 1767/06 whereby, the petitioner was declared as a Foreigner under the Foreigners Act, 1946, who had illegally entered into India on or after 25.03.1971.

3. The facts relevant for consideration of this Writ Petition, in brief, are as follows:-

That the petitioner obtained a temporary employment in brickkiln located at Hahchora under Teok Police Station in Jorhat District of Assam and was employed by one Sri Malaya Saikia. During his stay at Jorhat, an enquiry was initiated being IM(D)T Enquiry No. 186/2004 by the Enquiry Authority under the Illegal Migrants (Determination by Tribunals) Act, 1983, as regards his nationality doubting him to be a Bangladeshi. Ultimately, the Superintendent of Police (Border) Jorhat on 13.09.2004 referred the said IM(D)T Case No. 186/2004 to the Tribunal, under IM(D)T Act, 1983 at

Jorhat during its force for its opinion as to whether the present petitioner is a citizen of India or not. Later on, after striking down of the IM(D)T Act, 1983 by the Hon'ble Supreme Court in the Case of "*Sarbananda Sonowal –vs- Union of India and Another,*" reported in (2005) 5 SCC 665 and as per the direction of the Hon'ble Apex Court passed therein, the said case was transferred to the Foreigners Tribunal, Jorhat which was registered as JFT.1767/2006.

4. After registration of the case, the Foreigners Tribunal, Jorhat issued notice to the petitioner by its order dated 03.11.2009 and thereafter, by order dated 14.11.2009, decided to proceed *ex-parte* against the petitioner after perusal of the report of the process server.

5. By order dated 11.03.2010 passed in said JFT Case No. 1767/2006, the learned Foreigners Tribunal, Jorhat examined the witnesses for the State and observed that the petitioner/proceedee had failed to prove before the Tribunal that he is an Indian citizen or a Foreigner as defined under Section 6A of the Citizenship (Amendment) Act, 1985 and opined that the petitioner Sri Jonglu Ali @ Md. Janglu Ali is not an Indian citizen. It also opined that he is a Foreigner, who entered into the Territory of India, after 25th March, 1971 without any valid documents.

6. It is pertinent to mention herein that this writ petition along with some other writ petitions, namely, WP(C) No. 1296/2022, WP(C) No. 1614/2022, WP(C) No. 3448/2022, WP(C) No. 4279/2022 and WP(C) No. 4282/2022 was referred by a co-ordinate bench of this Court to a larger bench to decide the question as to whether the High Court under Article 226 of the Constitution of India has the power to transfer the case of a proceedee from one Foreigners Tribunal to another Foreigners Tribunal in the State of Assam in appropriate cases. However, by order dated 07.12.2023, the Full Bench of this Court, passed in this case separated it from those other writ petitions, directing to list it before the appropriate bench. Accordingly, this writ petition is listed before this Court.

7. It is also pertinent to mention herein that in the present writ petition, the petitioner also filed an Interlocutory Application for transferring the said Case No. JFT.1767/2006 from Foreigners Tribunal, Jorhat to Foreigners Tribunal at Kokrajhar. However, by order dated 15.05.2024, this Court had dismissed the said Interlocutory Application being devoid of merit.

8. A.R. Sikdar, learned counsel appearing for the petitioner has submitted that the petitioner, namely, Sri Jonglu Ali @ Md. Janglu Ali is a permanent resident of village Aibhandar No. 2, Bhowraguri, Post Officer-

Kamalsing, under Gossaigaon Police Station in the District of Kokrajhar.

9. It is also submitted on behalf of the petitioner that due to economic necessity, the petitioner ventured out of his permanent place of residence at Kokrajhar and obtained temporary employment in a brickkiln located at Hahchora under Teok Police Station in the District of Jorhat wherein, he was employed by one Sri Malaya Saikia.

10. It is also submitted by the learned counsel for the petitioner that after closing down of the brickkiln, the petitioner left the said place in Jorhat in search of some other employment and therefore, he did not receive the notice in said Case No. JFT.1767/2006 issued by the Foreigners Tribunal, Jorhat.

11. It is also submitted by the learned counsel for the petitioner that the notice on the petitioner was not duly served as per provisions of Clause 3(5) of the Foreigners (Tribunal) Order, 1964 and accordingly, the learned counsel for the petitioner has prayed for setting aside the impugned order dated 11.03.2010 passed by the learned Foreigners Tribunal, Jorhat in said Case No. JFT.1767/2006, whereby, it was opined that the petitioner, namely, Sri Jonglu Ali @ Md. Janglu Ali is not an Indian citizen and that he is a Foreigner, who entered into the Territory of India without any valid documents after 2^{5th} March, 1971.

12. On the other hand, Mr. G. Sarma, learned counsel for the respondent has submitted that on perusal of the notice of the process server, it appears that notice could not be served personally on the petitioner, as he was not found in the address mentioned in the notice issued to him and therefore, the process server enquired from the Government Gaonburah, who had informed him that the brickkiln in which the petitioner was working as been destroyed, the petitioner had left that place and no such person by the name of the petitioner resides in that place and therefore, the notice was returned without service after taking signatures of the Government Gaonburah.

13. We have considered the submissions made by the learned counsel for both the sides and also perused the materials available on record, including the case record of Case No. JFT.1767/06, which was called for from the Foreigners Tribunal, Jorhat in connection with this case. It appears from record of the Case No. JFT.1767/06 that the said case was registered on the basis of a reference made by the Superintendent of Police (Border), Jorhat and after striking down of the Illegal Migrants (Determination by Tribunals) Act, 1983 (during its force) by the Hon'ble Supreme Court of India in the Case of "*Sarbananda Sonowal –vs- Union of India and Another,*" reported in (2005) 5 SCC 665 and as per the direction of the Hon'ble

Apex Court passed therein, the said case was transferred to the Foreigners Tribunal, Jorhat.

14. It also appears from the record that by order dated 03.09.2009 that notice was issued to the present petitioner on 03.11.2009 directing him to appear before the Foreigners Tribunal, Jorhat on 14.12.2009 and to submit written statement/reply with all the relevant documents in support of his claim regarding his nationality.

15. It also appears that the process server Sri Sarbeswar Neog, returned back the said notice to the Foreigners Tribunal, Jorhat with his report dated 11.12.2009, wherein, signatures of the Government Gaonburah of the said locality was also taken. It appears from the report of the process server that the notice issued to the petitioner could not be served on him as the brickkiln, which was there at Hahchora was reported to be destroyed and it was also reported that the petitioner had left that place. If we peruse the order dated 14.12.2009 passed by the Foreigners Tribunal, Jorhat in Case No. JFT. 1767/06, it appears that in the said order, it has been categorically mentioned that the notice to opposite party returned un-served as the opposite party has left the address mentioned in the notice. It also appears that there is no indication in the said notice that the said notice was affixed on some conspicuous place, where the petitioner/proceedee last resided.

16. Hence, we are of the considered opinion that the notice issued to the petitioner by the Foreigners Tribunal, may not be regarded as duly served on him as per the provisions of Clause 3(5) of the Foreigners (Tribunal) Order, 1964.

17. We are of the considered opinion that the petitioner was thus not afforded a reasonable opportunity of showing that he is not a Foreigner. As such, we hold that the Foreigners Tribunal, Jorhat had erred in proceeding *ex parte* against the present petitioner in said Case No. JFT. 1767/06, in spite of the fact that in its order dated 14.12.2009, it was categorically mentioned that the notice issued to the petitioner returned without service. Before proceeding *ex parte* against the present petitioner, the Tribunal did not pass any order as regards deemed service of notice on the present petitioner.

18. For reasons discussed in foregoing paragraphs the impugned *ex parte* order dated 11.03.2010 passed in Case No. JFT.1767/06 is hereby set aside and quashed.

19. The Case No. JFT.1767/06 is remanded back to the Foreigners Tribunal, Jorhat for deciding the reference again from the stage of filling of written statement and written evidence-on-affidavit. Since the petitioner is now fully aware about the said Case No. JFT. 1767/06 pending before the Foreigners Tribunal, Jorhat regarding his

nationality, no further notice in the said case is required to be furnished to him.

20. The petitioner shall appear before the Foreigners Tribunal, Jorhat in the said Case No. JFT.1767/06 on 12.06.2024, along with a certified copy of this order. On that day itself, i.e. on 12.06.2024, he shall file his written statement as well as his written evidence-on-affidavit, along with the relevant documents in said Case No. JFT. 1767/06, on the basis of which he intends to prove his nationality.

21. It is hereby made clear that on failure on the part of the petitioner to appear before the Foreigners Tribunal, Jorhat on the aforementioned date, i.e. on 12.06.2024 and on the dates fixed by it, the Tribunal shall be at liberty to proceed against the petitioner in the Case No. JFT. 1767/06 as per provisions of law.

22. The Registry shall return the records of Case No. JFT.1767/06 with a copy of this order to the Foreigners Tribunal, Jorhat forthwith.

23. With the above observations and directions, this writ petition is accordingly allowed.

JUDGE

JUDGE

Comparing Assistant