

GAHC010317712019



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

Case No. : WP(C)/205/2020

KANU ROY
S/O- LT. CHITTA RANJAN ROY, R/O- VILL. KAMARDIGHIRPAR, P.O-
KAYASTHAGRAM, P.S. NILAMBAZAR, DIST.- KARIMGANJ (ASSAM).

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY., MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
SHASTRI BHAWAN, NEW DELHI-01.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

3:THE ELECTION COMMISSIONER
DISPUR
GHY.-06.

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN (NRC)
BHANGARH
GHY.-5.

5:THE DY. COMMISSIONER
KARIMGANJ
P.O.- KARIMGANJ
DIST.- KARIMGANJ (ASSAM)
PIN- 788710.

6:THE SUPDT. OF POLICE (B)

DIST.- KARIMGANJ
ASSAM
PIN- 788710.

7:THE OFFICER-IN-CHARGE
NILAMBAZAR POLICE STATION
ASSAM
DIST- KARIMGANJ
PIN- 788722

Advocate for the Petitioner : MS. J PAUL

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

20/04/2024

(M.R. Pathak, J)

Heard Ms. J Paul, learned counsel for the petitioner. Also heard Mr. J Payeng, learned Standing counsel, Home Department, Assam for the respondent Nos. 2, 6 & 7; A I Ali, learned Standing counsel, Election Commission of India for the respondent No. 3 and Mr. R Talukdar, learned Government Advocate, Assam for the respondent No. 5.

2. In a reference being made by the Superintendent of Police (Border), Karimganj under Order 2 (1) of the Foreigners (Tribunals) Order, 1964 seeking opinion as to whether the petitioner is or is not a foreigner, the said reference was registered as F.T. Case No. 615/2009 (P.E. No. D/5877/98) before the Foreigners Tribunal No. I, Karimganj (hereinafter referred to as the Tribunal). On 11.11.2009, the Tribunal in said F.T. Case No. 615/2009 issued notice to the petitioner and on 13.11.2009, it was sent in the address "Kanu Roy, son of Chitta Ranjan Roy, Village-Alankhani" directing him to submit his written statement/reply as required under the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.

3. The Tribunal came to the finding that notice was served upon the petitioner and in spite of that he remained absent without any steps. As such, the learned Foreigners Tribunal No. I, Karimganj by an ex-parte order dated 11.04.2011 opined the petitioner as a foreigner under the Foreigners Act,

1946 since he failed to discharge his burden under Section 9 of the said 1946 Act.

4. It is stated that the petitioner was not aware of the said order of the Tribunal dated 11.04.2011 since he did not receive the notice of said F.T. Case No. 615/2009 and that he came to know about it when he had to enquire as to why police are asking about him. On such enquiry he came to know about the said ex-parte order dated 11.04.2011 passed by the learned Tribunal declaring him to be a foreigner under the Foreigners Act, 1946.

5. Thereafter, the petitioner on 02.04.2018 submitted an application under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure before the said Tribunal praying to set aside the said ex-parte order dated 11.04.2011 stating that he was not aware of the proceeding initiated against him as notice of the said F.T. Case was not served upon him. Along with the said application, the petitioner also filed another application under Section 5 of the Limitation Act praying to condone the delay in filing the said application under Order IX Rule 13 read with Section 151 of the CPC.

6. Since the case of the petitioner falls under the jurisdiction of the Nilambazar Police Station, the learned Foreigners Tribunal No. I, Karimganj by its order dated 05.02.2018 made a request to place the matter before the learned Foreigners Tribunal No. III, Karimganj being the authorized jurisdictional authority. Accordingly, the said application of the petitioner under Order IX Rule 13 read with Section 151 of the CPC filed on 02.04.2018 for setting aside the said ex-parte order dated 11.04.2011 passed by the learned Foreigners Tribunal No. I, Karimganj along with the condonation application filed under Section 5 of the Limitation Act were placed before the learned Foreigners Tribunal No. III, Karimganj.

7. During the deliberation of the matter, when it was pointed out to the petitioner by the Foreigners Tribunal showing the signature of the recipient of the notice of the said F.T. Case by him by putting his signature, the petitioner submitted that he usually gives his signature in vernacular (Bengali) but the said notice was received by one Kanu Roy by putting his signature in English.

8. The learned Foreigners Tribunal No. III, Karimganj after hearing the submissions of the petitioner and being not convinced, by order dated 02.07.2019 rejected both the applications of the petitioner, noted above. Aggrieved with such orders, the petitioner filed this writ petition on 19.12.2019.

9. By order dated 19.05.2020, the records of said F.T. Case No. 615/2009 was called for from the Foreigners Tribunal No. I/Foreigners Tribunal No. III, Karimganj.

10. On perusal of the records of the said F.T. Case No. 615/2009, we found that notice to the petitioner was issued by the Foreigners Tribunal No. I, Karimganj on 10.11.2009, fixing 03.02.2010 for his appearance. Since it did not receive the report, the Tribunal on 03.02.2010 fixed the matter on 06.04.2010 awaiting the reports on the said notice. On 06.04.2010, the Tribunal received the report on the notice that was sent to the petitioner but found him absent and accordingly, fixed 01.07.2010 for written statement/reply of the petitioner. On 01.07.2010, the Tribunal found the petitioner absent and fixed 08.09.2010 for necessary order. Finding the petitioner absent, the Tribunal on 08.09.2010, fixed the matter on 03.12.2010. On 03.12.2010, the petitioner was found absent by the Tribunal and fixed the matter on 16.02.2011 for necessary order. On 16.02.2011, the Tribunal again found the petitioner absent without any steps and accordingly fixed the matter on 11.04.2011 for ex-parte order. On 11.04.2011, the Tribunal came to the finding that notice was served upon the petitioner and in spite of receipt of the same, he remained absent without any steps and thereby, he neither challenged the reference nor he took any steps to prove that he is not a foreigner.

11. Since the petitioner failed to discharge his burden under Section 9 of the Foreigners Act, 1946; the Foreigners Tribunal No. I, Karimganj by order dated 11.04.2011 passed in said F.T. Case No. 615/2009 opined that the petitioner is a foreigner under "D" Voter stream.

12. On perusal of the notice from the records of said F.T. Case No. 615/2009, we have seen that it was issued to the petitioner on 11.11.2009, fixing the matter on 03.02.2010 directing him to file his written statement/ reply along with the relevant documents to prove his nationality/citizenship and the same was sent vide Memo dated 13.11.2009.

13. From the notice, we have also seen that it was received by one Kanu Roy putting his signature in English, but the said notice did not contain any report of the process server as to when it was served on the addressee concerned in the address as specified in the said notice. Moreover, the said notice also did not contain the date given by the concerned recipient regarding the receipt of the same. Rather we found that the in-charge of Nilambazar Police Outpost through which the notice was served upon the alleged proceedee was returned to the Tribunal on 3rd or 8th of February, 2010. From the date given in the said notice by the in-charge of Nilambazar Police Outpost, it cannot be ascertained whether it is 3rd or 8th February of 2010. From the order sheet of said F.T. Case No. 615/2009 passed by the Foreigners Tribunal No. I, Karimganj, it is also seen that the Tribunal did not issue any fresh notice to the petitioner in the said case.

14. Mr. Payeng, learned Standing counsel, Home Department, Assam on perusal of the records

submitted that whether the notice of said F.T. Case No. 615/2009 was served upon the petitioner on 11.11.2009 or not, but leaving aside the dispute, it is also cannot be ascertained as to the person who received the said notice of the case by putting the signature of the addressee in English.

15. After hearing the learned counsels for the parties and considering the submissions made by them, we are of the opinion that the notice of said F.T. Case No. 615/2009 issued by the Foreigners Tribunal No. I, Karimganj was not duly served upon the petitioner as envisaged under Order 3 (5) of the Foreigners Act, 1946 as well as the Foreigners (Tribunals) Order, 1964 and the law laid down by the Hon'ble Full Court in the case of *State of Assam and Others -Vs- Moslem Mondal and Others*, reported in *2013 (1) GLT 809*.

16. Accordingly, we set aside the impugned ex-parte order dated 11.04.2011 passed by the learned Foreigners Tribunal No. I, Karimganj in F.T. Case No. 615/2009 as well as the subsequent order dated 02.07.2019 passed by the learned Foreigners Tribunal No. III, Karimganj in Misc. Case No. 12/2018, by which the Tribunal dismissed the application filed by the petitioner under Order IX Rule 13 read with Section 151 of the CPC for setting aside the ex-parte order dated 11.04.2011 passed by the learned Foreigners Tribunal No. I, Karimganj in F.T. Case No. 615/2009 as well as the application for condonation of delay filed under Section 5 of the Limitation Act to condone the delay in filing the said application under Order IX Rule 13 read with Section 151 of the CPC.

17. Since the petitioner is now aware of the proceeding initiated against him under the Foreigners Act, 1946, he is directed to appear before the Foreigners Tribunal No. III, Karimganj in said F.T. Case No. 615/2009 on 25th of May, 2024 along with the certified copy of this order.

18. It is also made clear that on the said date, i.e., 25.05.2024, the petitioner shall file his written statement/reply in said F.T. Case No. 615/2009 as well as his written evidence-in-affidavit in the said F.T. Case along with the relevant documents on the basis of which he wants to prove his nationality as required under the Foreigners Act, 1946.

19. Since the impugned order/opinion dated 11.04.2011 passed by the learned Foreigners Tribunal No. I, Karimganj in F.T. Case No. 615/2009 has been set aside and quashed, the interim protection and bail granted to the petitioner earlier on 19.05.2020 is hereby recalled/stands vacated.

20. However, failure on the part of the petitioner to appear before the Foreigners Tribunal No. III, Karimganj on 25.05.2024 in said F.T. Case No. 615/2009 and to file his written statement/reply and

also his written evidence-in-affidavit along with the relevant documents on the said date in said F.T. Case, the Tribunal shall be at liberty to proceed against the petitioner in the said F.T. Case, in accordance with law as per the provisions of said 1946 Act and 1964 Orders.

21. Registry shall return the records of said F.T. Case No. 615/2009 to the learned Foreigners Tribunal No. III, Karimganj forthwith along with a copy of this order.

22. With the above observation and direction, this writ petition stands allowed to the extent above.

JUDGE

JUDGE

Comparing Assistant