

GAHC010192222019



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

Case No. : WP(C)/6544/2019

ASOR UDDIN

S/O- KAZIM UDDIN, VILL. SAHARIAPAM, P.O. SAHARIA GAON, P.S.
MOIRABARI, DIST.- MORIGAON, ASSAM, PIN- 782126.

VERSUS

THE UNION OF INDIA AND 6 ORS.

REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI-1.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.

DISPUR

GUWAHATI- 6.

3:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-1.

4:THE CO-ORDINATOR

NRC

ASSAM

BANGAGHAR

GAUHATI-5.

5:THE DEPUTY COMMISSIONER

MORIGAON

P.O. MORIGAON

DIST.- MORIGAON

ASSAM

IN- 782126.

6:THE SUPERINTENDENT OF POLICE
MORIGAON
P.O. MORIGAON
DIST.- MORIGAON
ASSAM
IN- 782126.

7:THE OFFICER IN CHARGE OF MOIRABARI POLICE STATION
P.O. MOIRABARI
DIST.- MORIGAON
ASSAM
PIN NO. 782126

Advocate for the Petitioner : MR. M A SHEIKH

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE MANISH CHOUDHURY

ORDER

09.09.2021

[N. Kotiswar Singh, J.]

Heard Mr. M.A. Sheikh, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K.D. Choudhury, learned Assistant Solicitor General of India, for the respondent No.1 as well as appearing as standing counsel, NRC, for respondent No.4; Ms. A. Verma, learned special counsel, FT, appearing for respondent Nos.2, 5, 6 and 7 and Mr. A. Bhuyan, learned standing counsel, ECI, appearing for respondent No.3.

2. Considering the nature of the case, we are of the opinion that the present petition can be disposed of at the motion stage itself.
3. Records have been received and we have perused the same.

4. The present petition has been filed by the petitioner for setting aside the *ex-parte* order dated 26.04.2011 passed by the learned Member, Foreigners' Tribunal (2nd), Morigaon, Assam, in Case No.F.T.(D) 100/2009, by which the petitioner was declared as a foreigner under Section 2(a) of the Foreigners Act, 1946, because of his failure to submit written statement by adducing evidence to prove his documents.

5. The plea of the petitioner for his inability to appear before the Foreigners' Tribunal is that the petitioner is a very poor person and he could not readily collect the relevant documents bearing the names of his grandfather, father and also in respect of him for filing the written statement and as such, the petitioner did not appear before the Tribunal. He also could not communicate with the engaged counsel nor his counsel communicated with him of the subsequent dates fixed by the Tribunal. Further, it has been submitted that the petitioner had to leave the State of Assam for Kerala for earning his livelihood. He also submitted that the aforesaid case against the petitioner in the Foreigners' Tribunal was lodged by the verification officer as 'D' voter without proper examination of his documents. However, on receipt of the notice from the Tribunal, the petitioner had appeared on 12.02.2010 through his engaged lawyer as he had no intention to evade the proceedings. Thereafter, several dates were given by the Tribunal for filing of written statement on certain facts, but the petitioner failed to do the same for the reasons stated above, and as a result, the impugned *ex-parte* order was passed.

6. Ms. Verma, learned special counsel, FT, however, has objected to this petition by submitting that this kind of petition ought not to be entertained inasmuch as the petitioner himself is to be blamed for non-appearance, as law is clear that in the absence of the

proceedee concerned, the Tribunal had no option but to proceed *ex-parte* and declare him as a foreigner as required under law.

7. However, we are of the view that citizenship, being an important right of a person, ordinarily, should be decided on the basis of merit by considering the material evidences that may be adduced by the person concerned and not by way of default as happened in the present case.

8. In the present case, the petitioner has drawn our attention to the voters' lists of 1965, 1970 and 1971, wherein the names of his grandparents, parents and the petitioner himself have been shown to be included in respect of village Sahariapam, Mouza-Moirabari, District-Nagaon, under Assam Legislative Assembly Constituency, No.84 Laharighat and No.83 Dhing. Accordingly, it has been submitted that otherwise, there are sufficient documents and evidences to prove that he is an Indian citizen. However, these are factual aspects which are to be ordinarily considered by the Foreigners' Tribunal and not by this Court. However, if the petitioner is able to prove the aforesaid documents, certainly, he can make a reasonable claim that he is an Indian citizen and not a foreigner, for which we feel that it will be most appropriate to remand the matter to the Foreigners' Tribunal (2nd), Morigaon, Assam for reconsideration.

9. Considering the circumstances as narrated by the petitioner, we are also of the view that there were sufficient reasons for the petitioner for not being able to appear before the Foreigners' Tribunal to enable the Tribunal to consider his claim on merit and accordingly, we are inclined to afford another opportunity to the petitioner to appear before the Foreigners' Tribunal to prove that he is an Indian, not a foreigner.

10. For the reasons discussed above, the present petition is allowed by setting aside the impugned *ex-parte* order dated 26.04.2011 passed by the learned Member, Foreigners' Tribunal (2nd), Morigaon, Assam, in Case No.F.T.(D) 100/2009. The petitioner will appear before the Foreigners' Tribunal (2nd), Morigaon on or before 08.11.2021 for the fresh proceedings. However, since his citizenship has come under cloud, he will remain on bail during the proceedings for which he will appear before the Superintendent of Police (B), Morigaon within 15(fifteen) days from today but the petitioner will remain on bail on furnishing a bail bond of ₹ 5,000/- with one local surety of the like amount to the satisfaction of the said authority. The concerned Superintendent of Police (B) shall also take necessary steps for capturing the fingerprints and biometrics of the iris of the petitioner. It is also made clear that the petitioner shall not leave the jurisdiction of the Morigaon district without obtaining permission from the Superintendent of Police (B), Morigaon.

11. Considering the nature of the case, we however, are also inclined to impose a cost of ₹ 5,000/- on the petitioner to be deposited before the Tribunal. We also make it clear that in the event of failure of the petitioner to pay the aforesaid cost of ₹ 5,000/- as well as in the failure to appear before the Foreigners' Tribunal (2nd), Morigaon, on or before 08.11.2021, the impugned *ex-parte* order dated 26.04.2011 which has been set aside by this Court today, will stand revived and the law will take its own course.

Sd/- Manish Choudhury
JUDGE

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant