

GAHC010130062018



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

Case No. : WP(C)(Suo Moto) 11/2018

1:XXXX
GUWAHATI
VERSUS
1:IN RE- THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY, HOME AND POLITICAL (B) DEPTT.,
GOVT. OF ASSAM, JANATA BHAWAN, DISPUR, GUWAHATI-6.
2:SHRI JAYANTA KR. MISHRA
MEMBER
FOREIGNERS' TRIBUNAL 3RD
KARIMGANJ.
3:SHRI MANOJ KR. GOGOI
STENOGRAPHER
FOREIGNERS' TRIBUNAL NO. 4
MORIGAON

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : MR. A KALITA

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

19.09.2019

(Manojit Bhuyan, J)

Heard Mr. T.J. Mahanta, learned senior counsel appearing for the Gauhati High Court as well as Mr. U. K.Nair, learned senior Counsel represents the Foreigners Tribunal (FT). Mr. P.J. Saikia, learned counsel appears for respondent no.3.

This writ petition was registered suo moto on the basis of a report prepared by the Registry following receipt of one e-mail dated 23.04.2018 communicated by the Member In-charge, Foreigners' Tribunal No.4, Morigaon, addressed to the Principal Secretary to the Govt. of Assam, Home and Political Department, with a copy marked to the Registrar(Judl), Gauhati High Court, mentioning therein that 288 references were shown disposed of by the earlier Member but detailed opinions signed by the Member were not available in the case records. Considering the gravity and seriousness of the issue, this Court vide order dated 15.06.2018 issued Notice with direction to the Principal Secretary, Home and Political (B) Department, Government of Assam to seize the case records of those 288 references and to place those records before the Court along with a detailed report compiled in that regard.

The Deputy Secretary to the Government of Assam, Home & Political Department, vide letter dated 03.10.2018, submitted the Report that 50 case records out of the 288 cases were already seized on 21.02.2018. After making due scrutiny through the Special Cell of the Office of the Addl. D.G.P.(Border), Assam, 13 nos. of cases out of the seized 50 cases where the proceedees have been declared as India, were already recommended by the State Level Screening Committee for filing writ petitions before this Court. Accordingly, the case records of the 13 cases were handed over to the Special Standing Counsel, Gauhati High Court. In so far as the rest 37 cases are concerned, the Report indicates that the same were found to be correct in all respects. The Report also mentions that out of the remaining 238 case records, the Superintendent of Police (Border), Morigaon had placed 232 case records before the Addl. D.G.P (Border), Assam. On a scrutiny so conducted it was reported that out of the 232 case records, as many as 175 cases have been found correct in all respects, while in the remaining 57 cases anomalies were detected. As per the said Report, the anomalies detected are as follows :-

“(a) Judgment not found on record - 11

(b) Mismatching between Judgment Copy with Order Sheet – 06

- (c) Dual Judgment – 05
- (d) No vacate order found- 32
- (e) Number of proceedee discrepancy – 02
- (f) Undisposed since proceedee expired – 01”

The Report dated 03.10.2018 also makes mention that the total number of cases seized is 282 and not 288 as because 6 nos. of cases have mentioned twice.

As appearing from the Report the following cases were having anomalies:-

“JUDGMENT NOT FOUND IN RECORD”

Sl. No.	F.T. Case No.	Name of the proceedee	Remarks
1.	C/No-380/2015	Smti. Chaleha	Judgement not found in record
2.	C/No-39/2015	Balai Biswas & Othes	Judgement not found in record
3.	C/No-420/2016	Hira Mandal @ Hiralal Biswas	Judgement not found in record
4.	C/No-228/2016	Md. Lokman Hakim	Judgement not found in record
5.	C/No-163/2015	Musstt. Surjya Bane	Judgement not found in record
6.	C/No-149/2015	Sukur Ali	Judgement not found in record
7.	C/No-410/2016	Md. Abi Ullah	Judgement not found in record
8.	C/No-11/2017	Md. Nur Mahammed	Judgement not found in

			record
9.	C/No-207/2016	Md. Hazarat Ali	Judgement not found in record
10.	C/No-241/2016	Sri Lalit Mallik	Judgement not found in record
11.	C/No-77/2015	Smti. Bagimaya Chetri	Judgement not found in record

“MISMATCHING BETWEEN JUDGMENT WITH ORDER SHEET”

Sl. No.	F.T. Case No.	Name of the proceedee	Remarks
1.	FT-03/2015	Md. Azizul Haque	Proceedees is declared Indian in note sheet, but in opinion all five proceedees declared as foreigner.
2.	FT-10/2015	Md. Hussain Ali	Proceedees is declared Indian in note sheet, but in opinion all three proceedees declared as foreigner.
3.	FT-02/2015	Md. Majibur Rahman	Proceedees is declared Indian in note sheet, but in opinion all seven proceedees declared as foreigner.
4.	FT-(D) 88/2015	Smti. Jaba Talukdar	Proceedees is declared Indian in note sheet, but in opinion copies she declared

			as stream of foreigner (66-71).
5.	FT-(C) 250/2016	Binod Karmakar	Proceedees is declared Indian in note sheet, but in opinion copies he declared as stream of foreigner (66-71).
6.	FT-(D) 396/2015	Md. Anuwar Hussain	In reference proceedee name was Md. Anuwar Hussain, S/o Abdul Rahman, but in opinion another two names are found viz, Rahima Khatoon and her father name is Rupa Chand Biswas which is not related to this case.

“DUAL JUDGMENT”

Sl. No.	F.T. Case No.	Name of the proceedee	Remarks
1.	FT-(C) 136/16	Md. Harmuj Ali	Two opinion are found in the same case.
2.	FT-(C) 127/15	Sri Sudhir Mandal	Two opinion are found in the same case
3.	FT-(C) 222/16	Noor Islam	Two opinion are found in the same case
4.	FT-(C) 113/15	Falu Shaikh	Two opinion are found in the same case
5.	FT-(C) 190/16	Md. Amir Uddin	Two opinion are found in

			the same case

“NO VACATE ORDER”

Sl. No.	F.T. Case No.	Name of the proceedee	Remarks
1.	C/NO.73/2008	Md. Rahila Khatun @ Rajela	Proceedee declared exparte foreigner earlier, later he was declared Indian without vacating the earlier order
2.	C/NO.488/2016	Musstt. Manowara Khatun @ Manora Begum	-Do-
3.	C/NO.481/2016	Musstt. Manikjan	-Do-
4.	C/NO.16/2017	Musstt. Aklima Khatun	-Do-
5.	C/NO.126/2016	Sri Dhanjoy Barman	-Do-
6.	C/NO.495/2016	Musstt. Anowara Begum	-Do-
7.	C/NO.35/2017	Md. Ahed Ali @ Kalu Sheikh	-Do-
8.	C/NO.448/2016	Shri Dhiren Das	-Do-
9.	C/NO.19/2017	Musstt. Hamida Khatun	-Do-
10.	C/NO.45/2017	Musstt. Sahara Khatun	-Do-
11.	C/NO.482/2016	Sri Sadhar Das	-Do-
12.	C/NO.20/2017	Musstt. Hajera Khatun @	-Do-

		Begum	
13.	C/NO.504/2016	Smti. Milon Mondal	-Do-
14.	C/NO.275/2016	Smti. Lakhi Biswas	-Do-
15.	C/NO.22/2017	Musstt. Kafuran Nessa @ Tahura	-Do-
16.	C/NO.129/2016	Sri Madan Das	-Do-
17.	C/NO.06/2017	Sri Rajmohan Das @ Others	-Do-
18.	C/NO.24/2017	Musstt. Golapjan	-Do-
19.	C/NO.498/2016	Md. Akbar Ali	-Do-
20.	C/NO.472/2016	Musstt. Ramija Khatun	-Do-
21.	C/NO.432/2016	Musstt. Surjyabanu Begum	-Do-
22.	C/NO.503/2017	Smti. Rajubala Mandal	-Do-
23.	C/NO.279/2016	Sri Milon Das & Others	-Do-
24.	C/NO.496/2016	Musstt. Rahima Khatun	-Do-
25.	C/NO.487/2016	Benu Choudhury	-Do-
26.	FT(D) 01/2017	Nasimuddin	-Do-
27.	FT(D) 15/2017	Md. Idris Ali	-Do-
28.	FT 136/2016	Smti. Sarojani Das	-Do-

29.	FT 135/2016	Smti. Hari Das	-Do-
30.	FT 124/2016	Late Brajendra	-Do-
31.	FT(D) 445/2016	Md. Ruhul Amin	-Do-
32.	FT(D) 501/2016	Md. Amjad Ali	-Do-

“NOS OF PROCEEDEE DISCREPANCY”

Sl. No.	F.T. Case No.	Name of the proceedee	Remarks
1.	FT-(D) 125/2015	Sri Rabindra Chanda	Proceedee name Rabindra Chanda. S/o Ridai Chanda in reference, but opinion (18-06-2016) his father name mentioned as Rupchand Biswas and some other exhibited copies Smti. Rahima Khatun which is not related to this case.
2.	FT-51/2017	Md. Pachar Ali	In opinion order (06-04-2018) para 2, page-2 one name Musstt. Anuwara Khatun, D/o Akkash Ali, W/o Faijul Islam whom isnot related to this case at all.

“UNDISPOSED SINCE PROCEEDEE EXPIRED”

Sl. No.	F.T. Case No.	Name of the proceedee	Remarks
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1.	FT- 73/2009	Md. Taleb Ali @ Abu Taleb	No opinion passed by Ld. Member so the offspring have doubtful.

From the above we hold that mere noting in the note-sheet or passing of an order that reference was disposed of without a reasoned opinion/absence of judgment copy/dual judgment/without vacating earlier order in the case file would be no order in the eye of law. Such a noting or order cannot be construed to be an order disposing of a reference case by a Foreigners Tribunal. There has to be an opinion on record which must carry the seal and signature of the Presiding Officer of the Tribunal. In the absence thereof, such a reference will have to be treated as not being disposed of and be considered as a pending reference, which would have to be heard afresh. Therefore, in all the above 57 references of the Foreigners Tribunal No.4, Morigaon, the 'orders of disposal' are *non est* in the eye of law and liable to be set aside, which is accordingly done. All the above 57 references shall now be heard afresh from the respective stages. The Member of the Tribunal shall list the above references in the Notice Board of the Tribunal giving fresh dates. Fresh notice may also be issued to the proceedees.

As discussed above, the disposal order in the above manner in respect of the 57 references shall have no legal consequences and shall not be acted upon by the Superintendent of Police (Border), Morigaon as well as by the Deputy Commissioner, Morigaon. All the 57 references shall now be treated as pending references.

Before parting with the record, we express our disappointment over the way the Member conducted himself. This was not expected. In the ordinary course this would have called for some action, disciplinary or otherwise. We leave it at that.

The present suo-moto writ petition stands disposed of.

Registry to inform the concerned Foreigners' Tribunal, Deputy Commissioner,

Morigaon and Superintendent of Police (B), Morigaon for doing the needful.

Copies of this order be furnished to Mr. T.J. Mahanta, learned senior counsel appearing for the Gauhati High Court; Mr. U. K.Nair, learned senior Counsel for the Foreigners Tribunal (FT); learned Standing Counsel for the Election Commission of India and State Co-ordinator, NRC.

JUDGE

JUDGE

Comparing Assistant