

GAHC010258712019



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

Case No. : WP(C) 7818/2019

1:SAHINUR ISLAM
S/O- BABUL HUSSAIN, VILL- SURJYAKHATA PT-I, P.O. AND P.S.
BILASIPARA, DIST- DHUBRI, ASSAM, PIN- 783348

VERSUS

1:THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY., THE MINISTRY OF HOME AFFAIRS, NEW DELHI-01

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-01

3:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-6

4:THE DY. COMMISSIONER
DHUBRI
DIST- DHUBRI
ASSAM
PIN- 783301

5:THE SUPERINTENDENT OF POLICE (B)
JORHAT
DIST- JORHAT ASSAM
PIN- 785001

6:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GHY-0

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : ASSTT.S.G.I. (R1)

BEFORE
HONOURABLE MR. JUSTICE MANOJIT BHUYAN
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

28.02.2020

(Manojit Bhuyan, J)

Heard Mr. H.R. Ahmed, learned counsel for the petitioner as well as Ms. G. Hazarika, learned counsel representing respondent no. 1. Ms. B. Das, learned counsel represents respondent no. 2. Mr. A. Kalita, learned counsel represents respondent nos. 3,4 and 5 whereas Ms. U. Das, learned counsel appears for respondent no. 6.

Petitioner assails *ex-parte* order/opinion dated 06.04.2010 passed by the Foreigners Tribunal, Jorhat, in Case No. JFT.1888/2006, declaring him to be a foreigner, having illegally entered into India (Assam) after 25.03.1971.

Mr. Ahmed submits that the order of the Tribunal was passed without granting opportunity to the petitioner to contest the case and/or opportunity to discharge the burden as required under Section 9 of the *Foreigners' Act 1946*. It is stated that no notice, whatsoever, was served upon the petitioner. Further it is stated at paragraph 9 of the writ petition that the petitioner had come to learn about the impugned opinion only in the month of July, 2019 during the process of NRC hearing.

To test the arguments so advanced we have perused the materials available on record. From the Service Report dated 22.02.2010, at page 42 of the writ petition, it is seen that as the petitioner was not available in the given address, notice dated 05.02.2010 was returned

unserved.

Having regard to the admitted fact that service of notice was not effected in any manner on the petitioner, as required to be done under Paragraph 3(5) of the *Foreigners (Tribunals) Order, 1964*, we are of the view that the petitioner was denied opportunity of hearing to contest the case on merits.

In view of the above, we set aside the impugned order dated 06.04.2010 with direction to the petitioner to appear before the Foreigners Tribunal, Jorhat, on 20.03.2020, on which date he shall file his written statement without fail. No fresh Notice is required to be issued by the Tribunal, either for his appearance or for filing written statement. The Tribunal shall proceed accordingly and conclude the proceeding within 60(sixty) days from 20.03.2020. We make it clear that if the petitioner defaults in appearing before the Tribunal and to file written statement on 20.03.2020 and/or defaults in participating in the proceeding on the dates to be fixed in the case, it shall be open to the Tribunal to pass such order or orders as may be deemed fit and proper and in accordance with law.

For the purpose of concluding the reference case within the period specified above, the Tribunal shall act upon the certified copy of this order, which the petitioner is permitted to furnish before the Tribunal on the date of appearance i.e. 20.03.2020.

To the extent above, the writ petition stands allowed.

JUDGE

JUDGE

Comparing Assistant