
(2019) 03 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition (C) No. 2989 Of 2018

Abdul Barek And 2 Ors

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

Foreigners (Tribunals) Order, 1964 — Rule 3(5)(f)

Citation : (2019) 03 GAU CK 0005

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : P N Sharma

Judgement

AM Bujor Barua, J

1. Heard Mr. PN Sharma, learned counsel for the petitioners and Mr. J Payeng, learned counsel appearing for the Foreigners' Tribunal and Border Areas. Also heard Mr. AI Ali, learned counsel for the Election Commission of India as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.

2. On being referred by the Superintendent of Police (Border), Morigaon, FT Case No.115 of 2016 was registered in the Foreigners Tribunal No.3, Morigaon.

3. The Tribunal issued notice to 1.Barek Ali, son of Late Tabal Hussain, 2. Musstt. Saida Khatun, wife of Barek Ali and 3. Musstt. Rabiya Khatun also shown as wife of Barek Ali. The report of the process server states that when the petitioner was approached for receiving the notice, she had refused to accept the same. Accordingly, the notice was put up in the wall of the house where the petitioner resided. In the resultant situation, an exparte order dated 28.09.2016 was passed declaring the petitioners to be foreigners who entered the State of Assam after 25.03.1971.

4. In paragraph-3 of the order of the Tribunal, it is recorded that as per the process server report dated 27.04.2016, when the person concerned went to the

dwelling house of the petitioners to serve the notice, after due enquiry, it was learnt that though the petitioners used to reside at the given address earlier, but now they have shifted to some other place and accordingly the notice was hung in the house of the petitioners in the presence of the Government Gaonburah.

5. Apparently, the Tribunal seeks to take the view that the manner in which the notice was served on the petitioners, the same satisfies the requirement of the provision of Rule 3(5)(f) of the Foreigners (Tribunals) Order, 1964. But when we go through the report of the process server, we notice that it is a case where the petitioner had refused to accept the notice from the process server and therefore a refusal of notice cannot be construed to be a service of the notice under Rule 3(5)(f) of the Foreigners (Tribunals) Order, 1964.

6. As the notice was not served on the petitioners, we therefore set aside the order dated 28.09.2016. But at the same time, we also cannot be oblivious to the fact as per the report of the process server the petitioner had refused to accept the notice. Although in course of the present proceeding, the petitioner seeks to justify the same by stating that her name was incorrectly written in the notice of the Tribunal but an incorrect spelling of the name cannot be the basis for a proceedee to refuse to accept the notice. If there is any doubt on the mind of the proceedee that the notice may actually have been meant for some other person, it is for the proceedee to appear before the Tribunal and bring to its notice for verification as to whether the person appearing before the Tribunal was itself the person upon whom the notice was intended.

7. As the petitioners are declared to be foreigners without appropriate materials on record for an adjudication on merit, we are of the view that the petitioners deserve another opportunity. But at the same time as the petitioners had refused to accept the notice, from that point of view, there cannot be any infirmity in the order dated 28.09.2016.

8. Accordingly, for enabling the petitioners to re-appear before the Tribunal, we impose a cost of Rs.15,000/-to be deposited before the District Legal Services Authority, Morigaon and upon showing the proof thereof, the petitioners shall appear before the Tribunal on 01.04.2019. Upon appearance of the petitioner before the Tribunal along with the written statement to be filed, Tribunal shall decide the matter within a period of 60 days thereafter.

9. It is stated that the petitioners are presently in the detention camp at Tezpur. As the order dated 28.09.2016 is interfered, the petitioners shall be released forthwith subject to submission of two surety bonds from two prominent persons who give the surety subject to the satisfaction of the Superintendent of Police (Border) Morigaon who shall verify and satisfy himself as to the authenticity and acceptability of the two sureties to his satisfaction.

10. Upon appearance before the Tribunal, it shall be open for the Tribunal to pass further order as to whether the petitioners have to be kept in detention or not.

11. Writ petition stands allowed to the extent as indicated above.