
(2018) 03 GAU CK 0022
In the Gauhati High Court
Case No : WP(C) 1222 of 2018

ABDUL KUDDUS

APPELLANT

Vs

UNION OF INDIA AND 8 ORS.

RESPONDENT

Date of Decision : 05-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 GAU CK 0022

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Â Ujjal Bhuyan J.

1.Heard Ms. L Wajeeda, learned counsel for the petitioner and Mr. J Payeng, learned Special Counsel, FT.

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 25.7.2017 passed by the Foreigners

Tribunal, Nagaon Court No.10th at Sankardev Nagar, Hojai in FT(D) Case No.1059 of 2015 (State vs- Abdul Kuddish @ Kuddus) declaring the

petitioner to be a foreigner who had illegally entered into India (Assam) on or after 25.3.1971. Learned counsel for the petitioner submits that present

is a case of mistaken identity. There is an identical person by the same name who is in fact a foreign national. Because of such mistaken identity,

petitioner had to suffer an adverse order of the Tribunal. On the other hand, learned Special Counsel submits that such a plea taken by the petitioner

would not be tenable at the stage of writ proceeding. That apart, the claim of the Â petitioner is factual and would require material verification which

may not be possible in a proceeding under Article 226 of the Constitution. After hearing learned counsel for the parties and on due consideration, we

find that the process server had pasted the notice issued by the Tribunal to the petitioner in a conspicuous place near the residence of the petitioner

where he last resided. That was treated to be sufficient service of notice by the Tribunal.

We are afraid we can accept the same as proper service of notice. If the petitioner was not found available in his residence, the notice could have

been pasted in a conspicuous place of the residence where the petitioner had last resided. But that was not done. Therefore, notice was not properly

served upon the petitioner. In such a case, impugned order of the Tribunal would stand vitiated. In that view of the matter, impugned order dated

25.7.2017 is set aside.

In so far the claim of mistaken identity of the petitioner is concerned, we are of the view that the said claim by the petitioner raises a disputed factual

assertion which may not be gone into a proceeding under Article 226 of the Constitution. Tribunal would be the appropriate forum to decide the above

aspect of the matter.

It is submitted that following order passed on 25.7.2017, petitioner was taken into custody. If that be so, we direct the Superintendent of Police

(Border), Hojai to produce the petitioner before the Foreigners' Tribunal, Nagaon Court No.10th at Sankardev Nagar, Hojai in connection with

FT(D) Case No.1059 of 2015 on 26.3.2018 at 10.30 am whereafter Tribunal shall proceed with the reference in accordance with law and conclude

the same within a period of 60 days from the date of production.

Before parting with the record, we make it clear that we have not expressed any opinion on the merit of the case. Writ petition is disposed of.

Registry to inform the concerned Foreigners' Tribunal, Deputy Commissioner and the Superintendent of Police (Border) for doing the needful.

A copy of this order may be furnished to learned Standing Counsel, Election Commission of India and the State Coordinator, NRC.