
(2019) 02 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (C) No. 7791 Of 2016

Abdul Matleb @ Mutaleb Ali @ Matleb Ali

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Citation : (2019) 02 GAU CK 0032

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

Bench : Division Bench

Advocate : S.S Aziz, A. Matin, A Ali, A. Kalita, A Verma, G Sarma

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. A. Matin, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. A. Kalita, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas, Ms. A Verma, learned standing counsel for the authorities under the NRC 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 (B), Nalbari, F.T. (NAL) Case No. 529/2006 was registered against the petitioner. As the petitioner did not appear before the Tribunal, by an order dated 29.06.2011, upon arriving at a conclusion that the notice was duly served on the petitioner, had proceeded ex-parte against the petitioner. Against the ex-parte order dated 29.06.2011, the petitioner preferred WP(C) No. 5560/2012 which was given a final consideration by the order dated 27.08.2015, requiring the petitioner to approach the Tribunal for setting aside the ex-parte order. Upon such application being filed which was registered as Misc Case No. 52/2015, the order dated 26.07.2016 was passed wherein, the Tribunal arrived at a conclusion that although a stand was taken that the petitioner had not received any notice, but the records reveal otherwise.

Accordingly, the application for recalling the ex-parte order was refused by the order dated 26.07.2016.

3. Being aggrieved, the present writ petition is preferred. We have verified the original copy of the notice which was served upon the petitioner and it reveals that the notice was duly served upon him.

4. Accordingly, we are of the view that a stand taken by the petitioner before the Tribunal that no notice was served on him is factually incorrect. From the said point of view, the order dated 26.07.2016 by which Misc Case No. 52/2015 was dismissed requires no interference. But however, as the petitioner had been declared to be a foreigner without there being any material against him, we are of the view that the ends of justice would be met if the petitioner is given another opportunity to appear before the Tribunal but however, for deliberately not appearing before the Tribunal, the petitioner is imposed a cost of Rs.10,000/- which is to be deposited before the District Legal Services Authority, Nalbari. Further, as the petitioner had made a false statement before the Tribunal that no notice was issued upon him and the record reveals that the notice was actually served on the petitioner, further a cost of Rs.5,000/- is imposed on the petitioner, also to be deposited before the District Legal Services Authority, Nalbari.

5. Upon the proof of the cost being paid is produced, the petitioner shall appear before the Tribunal on 18.03.2019 along with a copy of the written statement to be filed. Upon such appearance, the Tribunal shall decide the reference within a period of 60 days thereafter.

6. In terms of the above, the writ petition stands allowed to the extent indicated above.