

(2019) 03 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 1357 Of 2019

Abdus Salam

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

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

Citation : (2019) 03 GAU CK 0010

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

Bench : Division Bench

Advocate : A Hussain

Judgement

AM Bujor Barua, J

1. Heard Mr. A. Hussain, learned counsel for the petitioner. Also heard Mr. A Ali, learned counsel for the Election Commission of India, Mr. A. Kalita, learned standing counsel for the State of Assam appearing for the Foreigners Tribunal and Border matters 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) Jorhat, Case No.JFT.497/2006 was registered against the petitioner before the Foreigners Tribunal, Jorhat. The petitioner being aggrieved by the ex-parte order dated 02.08.2008 of the Foreigners Tribunal, Jorhat, has approached this court by way of this writ petition. By the order dated 02.08.2008, the Foreigner Tribunal at Jorhat arrived at a conclusion that as the petitioner did not appear before the Tribunal on the date fixed for his appearance, therefore, the burden of proof of the petitioner remained un-discharged. Accordingly, the Tribunal had declared the petitioner to be a foreigner who entered India after 25.03.1971.

3. We have perused the records before the learned Tribunal and from the report of the process server dated 31.10.2007, it is seen that the petitioner could not be traced out at the appropriate place for the purpose of service of notice and,

therefore, the signature of the house owner was taken as a witness.

4. It is taken note of that the report of the process server does not even indicate as to where the notice of the petitioner was kept hanging. We have taken note of the provisions of Rule 3(5)(f) of the Foreigners (Tribunals) Order, 1964 which, inter alia, provides the procedure as to how the notice has to be served on the proceedee. The provisions of Rule 3(5)(f) specifically provides that if the proceedee has changed the place of residence or place of work, without intimation to the investigating agency, the process server shall affix a copy of the notice on the outer door or some other conspicuous part of the house in which the proceedee ordinarily resides or last resided or reportedly resided or personally worked for gain or carries on business, and, shall return the original to the Foreigners Tribunal from which it was issued. As already indicated, the report of the process server does not indicate that upon the petitioner not being found at the required address, the notice thereof had been affixed on the outer door or some conspicuous place of the house where the proceedee resides or last resided. In view of the procedural aberration of Rule 3(5)(f) of the Foreigners (Tribunals) Order, 1964, we are of the view that the manner in which the notice was deemed to be served was in violation of the provision of Rule 3(5)(f) of the Foreigners (Tribunals) Order, 1964.

5. Considering the above, we are of the view that the order dated 02.08.2008 of the Foreigners Tribunal, Jorhat in Case No JFT.497/2006 is not sustainable and the same is accordingly set aside. Upon the order of the Tribunal being set aside, the matter now stands remanded to the Foreigners Tribunal, Jorhat for an appropriate adjudication of the claim of the petitioner. For the purpose, the petitioner shall appear before the Foreigners Tribunal, Jorhat on 01.04.2019 along with the written statement to be submitted. It is further provided that in the event, the petitioner fails to appear before the Foreigners Tribunal on the aforementioned date or does not cooperate with the Tribunal in any manner, the Tribunal would be at liberty to pass any order against the petitioner as per law.

6. It is also provided that the Tribunal shall give its opinion on the claim of the petitioner within a period of 60(sixty) days thereafter.

7. Writ petition stands allowed to the extent indicated hereinabove.