

(2021) 07 GAU CK 0046

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2823 Of 2021

Ananda Das

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 12-07-2021

Acts Referred:

Citation : (2021) 07 GAU CK 0046

Hon'ble Judges : N. Kotiswar Singh, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : S C Biswas

Final Decision : Disposed Of

Judgement

1. Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Mr. B. Chakraborty, learned CGC appearing for respondent No.1; Ms. A.

Verma, learned Special Counsel, F.T. for respondent Nos.2, 5 & 6; Mr. A. Bhuyan, learned standing counsel, ECI, appearing for respondent No.3 and

Ms. L. Devi, learned Standing Counsel, NRC appearing for respondent No.4.

2. Considering the nature of the case, we are of the opinion that the present petition can be disposed of at this stage by remanding the matter to the

Foreigners Tribunal-4th Tezpur at Gohpur as it is an ex parte order.

3. The case of the petitioner in brief is that the petitioner after receiving notice from the Foreigners Tribunal-4th Tezpur at Gohpur, appeared along

with his counsel before the Tribunal and submitted photocopies of all the relevant documents in support of his claim that he is an Indian citizen to his

counsel for being filed before the Tribunal as mentioned in para no.7 of the petition. But his counsel did not file the documents before the Tribunal.

The petitioner bonafide believed that the documents would have been filed by

the counsel. It has been also submitted that due to communication gap with his engaged counsel, he did not appear on the next date fixed by the Foreigners Tribunal. Unfortunately, his counsel also neither appeared before the Tribunal nor filed the documents resulting in passing of the ex-parte order by the Tribunal. The petitioner submits that under the circumstances, if the petitioner is given an opportunity to prove the documents, he can certainly prove that he is an Indian citizen and not a foreigner and accordingly, submits that the petitioner may be granted another opportunity to appear before the Foreigners Tribunal to prove his case that he is an Indian.

4. In the order dated 26.04.2019 passed by the Foreigners Tribunal-4th Tezpur at Gohpur it is clearly mentioned that the petitioner had appeared before the Foreigners Tribunal. Similarly, the orders passed on 07.02.2019 as well as on 07.03.2019 indicate to the same effect. However, as the petitioner as well as his counsel failed to appear before the tribunal on 05.04.2019 and 18.04.2019, the matter was proceeded ex parte by the Foreigners Tribunal and on 26.04.2019 the impugned ex parte order was passed.

5. We have also perused the documents filed by the petitioner before this Court in support of his claim that he is a genuine Indian citizen. In this connection he has filed a copy of the NRC document regarding his grandfather, namely, Raymohan as a citizen of this country. Similarly, he has also annexed a copy of the Electoral Roll of 78 Gohpur of L.A. Constituency of 1971 where his father â??Prafulla Haladarâ? has been shown as an elector. The petitioner has also annexed a copy of the transfer certificate issued by Lao Patgiir M.E. School showing that he had studied upto class-VII (seven). His caste certificate has also been annexed. Other certificates have also been annexed to prove that the petitioner is an Indian citizen.

6. We are, of course, not making any observation as to the admissibility, creditability or genuineness of the documents. However, if these documents are deemed to be genuine and correct, we are of the view that the petitioner would have a case to prove that the petitioner is an Indian citizen and not a foreigner. However, as the matter was proceeded ex parte for the reasons discussed above, the petitioner has been declared a foreigner without considering these documents.

7. Accordingly, considering the matter in its entirety, we are of the view that the petitioner before being declared a foreigner, an opportunity may be

afforded to him to prove that he is an Indian citizen as the citizenship is a very important right of a person, which ordinarily ought to be considered on

merit on the basis of evidences rather than by way of default as happened in the present case. We are also satisfied with the grounds shown by the

petitioner in not being able to appear before the Foreigners Tribunal, leading to passing of the ex-parte decree by the Tribunal on 26.04.2019.

8. We have also noted the submission advanced by Ms. Anita Verma, Ld. Special Counsel that the petition may be disposed of after examining the

records of the Tribunal. However, we are of the view that since the opinion was rendered by the Tribunal without considering the documents, calling

for records will not make any difference, as we do not propose to examine the documents ourselves, which is best left to be examined by the Tribunal

and as such, we have felt that calling for records will merely delay the proceedings.

9. Accordingly, for the reasons discussed above, we allow this petition by setting aside the impugned ex parte order dated 26.04.2019 passed by the

Foreigners Tribunal."4th, Tezpur at Gohpur in F.T.(T-4)/GPR, Case No. 247/2016 [S.P., Ref. Case No. BSN(B)/2016].

The petitioner will appear before the said Tribunal within a period of 1 (one) month from today and file his written statement and produce necessary

documents and adduce evidences to prove his claim and thereafter, the Tribunal will decide the matter in accordance with law.

However, since the citizenship of the petitioner is under cloud, we also direct that the petitioner shall appear before the Superintendent of Police

(Border), Biswanath, but the petitioner will not be detained and remain on bail on furnishing a bail bond of Rs.5000/-(Rupees five thousand) with one

local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Biswanath till disposal of the reference. The concerned

Superintendent of Police (Border) shall also take steps for capturing the fingerprints and biometrics of the iris of the petitioner, if so advised. The

petitioner shall not leave the jurisdiction of Biswanath District without giving details of the place of destination and his place of stay to the

Superintendent of Police (Border), Biswanath.

10. The present petition stands disposed of accordingly.