

(2018) 03 GAU CK 0065
In the Gauhati High Court
Case No : WP(C) 1527 of 2018

AZAD ALI

APPELLANT

Vs

UNION OF INDIA AND 6 ORS.

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 GAU CK 0065

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan,J

Heard Mr. M.I. Hussain, learned counsel for the petitioner and Mr. A. Kalita, learned Special Counsel, F.T.

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 09.04.2003 passed by the Illegal Migrants

Determination Tribunal, Jorhat in J.D.T. Case No. 184/2000 (State vs-Md. Azad Ali) declaring the petitioner to be an illegal migrant under the

Illegal Migrants (Determination by Tribunals) Act, 1983 (IMDT Act).

Learned counsel for the petitioner submits that no notice was served upon the petitioner and therefore petitioner had no knowledge about such

proceeding registered against him, including the order dated 09.04.2003

On going through the order sheet, we find that on 22.01.2003 notice was issued to the petitioner but on 19.02.2003 notice was returned unserved.

Notice was re-issued to the petitioner. On the next date i.e. on 24.03.2003, IMD Tribunal, Jorhat perused the service report of the process server and

thereafter held that no useful purpose would be served by directing re-issuance of notice to the petitioner. So summon was issued to the Enquiry

Officer and his evidence was recorded following which order dated 09.04.2003 was passed declaring the petitioner an illegal migrant.

Be it stated that U/s 3 (1) (C) of the IMDT Act an illegal migrant was defined as a foreigner who had unauthorisedly entered into India after the 25.03.1971.

Mr. A. Kalita, learned Special Counsel fairly submits that the order sheet annexed to the writ petition does not disclose service of notice on the petitioner.

We appreciate the fair stand taken by learned Special Counsel.

On going through the order dated 09.04.2003 we find that IMDT, Jorhat had perused the service report whereafter, it was observed that no useful

purpose would be served by ordering reissuance of notice. What were the contents of the service report were not mentioned but it is evident that

service of notice was not effected. If that be so, order dated 09.04.2003 would be untenable in law.

In view of above, we set aside the order dated 09.04.2003.

Now that Tribunals constituted under the IMD T Act have been abolished, we direct the record of J.D.T Case No. 184/2000 be placed before the

Foreigners Tribunal, Jorhat whereafter, the reference shall be re-registered by the Foreignersâ?? Tribunal, Jorhat under the Foreigners Act, 1946

read with the Foreigners (Tribunals) Order, 1964.

Petitioner shall now appear before the Foreigners Tribunal, Jorhat alongwith his written statement on 19.04.2018 at 10.30 a.m whereafter, the Tribunal

shall proceed with the reference in accordance with law and conclude the same within a period of 60 days from the date of appearance.

Needless to say, if there is any default on the part of the petitioner henceforth, Tribunal would be at liberty to pass such order as may be deemed fit

and proper.

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

RegistryÂ toÂ informÂ theÂ concernedÂ ForeignersÂ Tribunal,Â DeputyÂ CommissionerÂ and

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