
(2019) 02 GAU CK 0043
In the Gauhati High Court
Case No : Writ Petition (C) No. 4974 Of 2018

Benu Bhowmick

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Foreigners Act, 1946 — Section 9
Foreigners (Tribunals) Order, 1964 — Rule 3(5)(f)

Citation : (2019) 02 GAU CK 0043

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

Bench : Division Bench

Advocate : S Dutta

Judgement

A.M. Bujor Barua, J

1. Heard Mr. S. Dutta, learned counsel for the petitioner. Also heard Mr. A.I. Ali, learned counsel for the Election Commission of India, Mr. J. Payeng, 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, (Border) Dibrugarh, Case No. F.T.399/D/07 was registered against the petitioner in the Foreigners Tribunal at Dibrugarh. By the ex-parte order dated 20.01.2010, the petitioner was declared to be a foreigner who had entered the territory of Assam/India subsequent to 25.03.1971. In the order of the Tribunal, it has been recorded that the notice in a substituted manner was served as the petitioner was not found at her address. But at the same time, the Tribunal records that as the petitioner did not appear and therefore, the matter was proceeded ex-parte.

3. To substantiate the stand, the Tribunal relied upon the pronouncement by the Supreme Court in CIT -vs- Daulat A. 1967 SC 1952 which was as follows:-

"Substitute service is a valid service even through no copy is affixed in the court. House, affixing in the last residence is sufficient."

4. The said pronouncement of the Supreme Court was in a proceeding under the Income Tax Act, 1961 which has its own prescribed procedure for service of notice. Further the Tribunal also refers to Section 9 of the Foreigners Act which provides that the burden of proof that the proceedee is not a foreigner lies on the proceedee himself or herself.

5. From the aforesaid proposition, the Tribunal seeks to justify as to why it had proceeded ex-parte against the petitioner.

6. In this regard 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. 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.

7. We have perused the report of the process server which provides that as the petitioner was not found in the address given, therefore, a copy of the same was hung. But the report of the process server does not state as to where the notice was hung.

8. In view of the above, we are of the view that the manner in which the notice was served is at a variance from the procedure prescribed under Rule 3(5)(F) of Foreigners (Tribunal) Order 1964.

9. 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.

10. Accordingly, the order dated 20.01.2010 of the Foreigners Tribunal, Dibrugarh in Case No.F.T. 399/D/07 is set aside. It is stated that in the meantime, on the bifurcation of the Dibrugarh district, the reference against the petitioner has been transferred to the Foreigners Tribunal, Tinsukia.

11. Accordingly, the petitioner shall appear before the Foreigners Tribunal, Tinsukia 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 there from. In the event, the petitioner does not appear or does not

cooperate, the Tribunal would be at liberty to pass appropriate order under the law. It is stated that the petitioner is under detention in the detention camp at Jorhat.

11. As the order of the Tribunal has been interfered, it is directed that the petitioner be released from detention camp forthwith.