
(2018) 02 GAU CK 0070
In the Gauhati High Court
Case No : WP(C) 591 of 2018

HARUN RASHID

APPELLANT

Vs

THE UNION OF INDIA AND ORS

RESPONDENT

Date of Decision : 07-02-2018

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2018) 02 GAU CK 0070

Hon'ble Judges : Ujjal Bhuyan, Nelson Sailo

Bench : Division Bench

Advocate : S HUDA, HK Hazarika, P Baruah, CGC

Final Decision : Disposed

Judgement

1. Heard Mr. N Hoque, learned counsel for the petitioner and Mr. HK Hazarika, learned Government Advocate, Assam. We have also heard

Ms. P Baruah, learned Central Government Counsel.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 19.8.2016 passed by the

Foreigner's Tribunal , Jorhat in FT/SVR No.3789 declaring the petitioner to be a foreigner who had illegally entered into India (Assam) from

Bangladesh after 25.3.1971.

3. A perusal of the order dated 19.8.2016 would go to show that notice sent to the petitioner in his Sivasagar address could not be personally

served as he had left the address about 3 years back, and therefore, the notice was served by way of "hanging" before the Member of the Gaon

Panchayat. Notice issued to the petitioner in his Morigaon address could not be served upon the petitioner personally as he refused to accept the

same for which notice was "hanged" before two persons.

4. Learned counsel for the petitioner submits that petitioner is a permanent resident of Laharighat area in the district of Morigaon and for the

purpose of his livelihood, he had gone to Sivasagar district where he was suspected to be a foreigner. He submits that no notice was served upon

the petitioner and, therefore, he was not aware of the same.

5. On the other hand, Mr. HK Hazarika, learned Government Advocate submits that notice issued to the petitioner in his Laharighat address had

to be served in a substituted manner as the petitioner refused to accept the notice.

6. Submissions made by the learned counsel for the parties have been considered.

7. We find from the order dated 19.8.2016 that notice was issued to the petitioner in his Sivasagar address as well as in his Laharighat address. In

so far Sivasagar address is concerned, it was stated that notice was served by "hanging" before the Gaon Panchayat Member. Regarding service

of notice in Laharighat, it is mentioned that petitioner had refused to accept notice and therefore the notice was "hanged" before two persons. In

both the instances Tribunal had not disclosed as to where the notice was "hanged". If proceedee was not available, the notice could have been

served by pasting the same in a conspicuous place in residence where the petitioner had last resided. In case of refusal to accept notice either

similar procedure could have been adopted or report of the process server could have been considered, which is not discernable from the order

dated 19.8.2016.

8. In such circumstances, we are of the view that notice was not properly served upon the petitioner.

9. Consequently, order dated 19.8.2016 is hereby set aside. Petitioner shall now appear before the Foreigners Tribunal, Jorhat in connection with

FT/SVR No.3789 along with his written statement on 5.3.2018 at 10.30. am whereafter 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.

10. 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.

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

12. Writ petition is disposed of

13. Registry to inform the concerned Foreigners" Tribunal, Deputy Commissioner and Superintendent of Police (Border) for doing the needful.

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