

(2019) 03 GAU CK 0019
In the Gauhati High Court
Case No : Writ Petition (C) No. 2019 Of 2017

Hussain Khan

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

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

Citation : (2019) 03 GAU CK 0019

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

Bench : Division Bench

Advocate : P Agarwal, S. Banik, A Ali, A. Kalita, G Sarma

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. A. Kalita, learned counsel for the State of Assam appearing for the Foreigners' Tribunal and Border Areas 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 (B), Dibrugarh, the F.T. Case No. 2695/02 was registered in the Foreigners Tribunal, Dibrugarh. As the petitioner did not appear, the ex-parte order dated 12.09.2005 was passed which provided that although notice was served in the required manner but the petitioner remained absent, and accordingly, the final order was passed declaring the petitioner to be a foreigner.

3. Upon reading the order dated 12.09.2005, we understand that a separate final order was passed. The record reveals the existence of an order under Memo No. F.T. 4/99-2004/2062 containing the order but no date is mentioned therein. Consequently, we understand the undated order to be the order made against the petitioner declaring him to be foreigner. The undated order in paragraph 2

provides that notice was served on the petitioner by hanging as he was not found in the given address. Accordingly, as the petitioner failed to discharge the burden of proof, he was declared to be foreigner without specifying as to which category of foreigner he was declared, although the order may have required the petitioner to register his name in the Foreigners Regional Registration Authority Office.

4. We deprecate the manner in which the order has been made by the Foreigners Tribunal and expect that the opinion be rendered in a more desirable manner by following the required procedure of law.

5. But, however, we have also taken note that the petitioner was declared to be a foreigner ex-parte as because notice was construed to have been served. The order reflects the notice was served by hanging without any specifying as to whether the notice was hung. The report of the process server also does not even indicate as to where the notice of the petitioner was kept hanging.

6. 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.

7. In our view, the manner in which the notice had served was in conflict that the Rule 3(5)(f) accordingly undated ex-parte order to be contained in Memo No. F.T. 4/99-2004/2062 is set aside.

8. The petitioner shall appear before the Tribunal on 04.04.2019 along with a copy of the written statement to be filed. Upon such appearance of the petitioner, the Tribunal shall give a final consideration within a period of 60 days therefrom.

9. In terms of the above, the writ petition stands allowed to the extent indicated above.