
(2018) 11 GAU CK 0025
In the Gauhati High Court
Case No : Civil Writ Petition No.6057 Of 2018

Jahiruddin Ali Sekh

APPELLANT

Vs

Union Of India And 4 Ors

RESPONDENT

Date of Decision : 19-11-2018

Acts Referred:

Foreigners' Act 1946 — Section 9

Citation : (2018) 11 GAU CK 0025

Hon'ble Judges : Manojit Bhuyan, J;Nani Tagia, J

Bench : Division Bench

Advocate : A A R Karim

Final Decision : Allowed

Judgement

Heard Mr. A.A.R. Karim, learned counsel for the petitioner as well as Ms. G. Sarmah, learned counsel for respondent no.1; Mr. J.Payeng, learned

counsel for respondent nos. 2, 4 & 5 and Ms. A. Verma, learned counsel for respondent no.3. Petitioner assails ex parte order dated 18.11.2011

passed by the Foreignersâ?? Tribunal, Jorhat in Case No. J.F.T. 2756/06, declaring the petitioner to be a foreigner, who illegally entered into the

territory of India without any valid document after 25.03.1971.

Mr. Karim submits that the order of the Tribunal was passed without granting opportunity to the petitioner to contest the case and/or opportunity to

discharge the burden as required under Section 9 of the Foreignersâ?? Act 1946. It is stated that no notice whatsoever was served upon the

petitioner.

To test the arguments so advanced, we have perused the materials available on record. From the Service Report dated 04.08.2011, at page 39 of the

writ petition, it is seen that steps on the petitioner was taken in the substituted manner. However, the Report discloses that as the petitioner was not to

be found in the address mentioned, therefore, copy of the notice was affixed/hanged (Lotkaijari) at a public place.

Having regard to the manner of service as recorded in the Report dated 04.08.2011, we are of the considered view that notice, as required to be

served under Order 3(5)(f) of the Foreignersâ??(Tribunals) Order, 1964, was not complied with. We are also of the view that the petitioner was

denied opportunity of hearing to contest the case. It clearly appears that no notice was served on the petitioner by affixing a copy of the notice on the

outer door or some other conspicuous part of the house in which the petitioner ordinarily resides or last resided or reportedly resided or personally

worked for gain or carries on business.

In view of the above, we set aside the impugned order dated 08.11.2011 with direction to the petitioner to appear before the Foreignersâ?? Tribunal,

Jorhat on 03.12.2018, on which date he shall file his written statement without fail. No fresh Notice is required to be issued by the Tribunal, either for

his appearance or for filing written statement. Tribunal shall proceed accordingly and conclude the proceeding within 60(sixty) days from 03.12.2018.

We make it clear that if the petitioner defaults in appearing before the Tribunal and to file written statement on 03.12.2018 and/or defaults in

participating in the proceeding on the dates to be fixed in the case, it shall be open to the Tribunal to pass such order or orders as may be deemed fit

and proper and in accordance with law.

To the extent above, the writ petition stands allowed.