
(2019) 02 GAU CK 0039
In the Gauhati High Court
Case No : Writ Petition (C) No. 6856 Of 2018

Jamaluddin Sheikh @ Md. Jamal Ali

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

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

Citation : (2019) 02 GAU CK 0039

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

Bench : Division Bench

Advocate : A Paul, A Ali, J. Payeng, A Verma, G Sarma

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. A. Paul, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and 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 (B), Bongaigaon, Case No. BNGNFT (CHR) 1246/08 was registered against the petitioner. Subsequently upon bifurcation of the district Bongaigaon, the reference was transferred to the Foreigners Tribunal, Chirang and by the ex-parte order dated 11.07.2017, the petitioner was declared to be a foreigner who came into India on 25.03.1971.

3. Paragraph 3 of the order dated 11.07.2017 provides that notices were issued on 02.06.2017, which were returned back on 17.06.2017 and 05.07.2017 respectively, without being served on the proceedee.

4. It is taken note of that the report of the process server does not even indicate

as to where the notice of the petitioner was kept hanging. 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.

5. The manner in which the notice was stated to have been served is not in conformity with the requirements of Rule 3 (5) (f) of the Foreigners Tribunal Order 1964. Accordingly, the ex-parte order dated 11.07.2017 in Case No. BNGNFT (CHR) 1246/08 is set aside.

6. The petitioner shall appear before the Foreigners Tribunal, Chirang on 06.03.2019 along with a copy of the written statement to be filed. Upon such appearance, the Tribunal shall give a final adjudication within a period of 60 days thereafter. In the event, the petitioner does not appear or does not cooperate with the Tribunal for the required manner, it shall be at liberty to pass any order against the petitioner under the law.

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