
(2018) 04 GAU CK 0126
In the Gauhati High Court
Case No : WP(C) 2451 of 2018

KALAM UDDIN

APPELLANT

Vs

THE UNION OF INDIA AND 5 ORS.

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 04 GAU CK 0126

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan, J.

Heard Mr. A.R. Sikdar, learned counsel for the petitioner and Mr. J. Payeng, learned Special Counsel, Foreignersâ?? Tribunal (FT). By filing this

petition under Article 226 of the Constitution of India, petitioner seeks quashing of reference proceedings being G.F.T. (R) Case No.898/2017 pending

before the Foreigner Tribunal, Kamrup (Rural) No.1, Ulubari, Assam, at Guwahati (State Vs. Md. Kalam Ali).

According to the petitioner, his name is Kalam Uddin, son of Abul Mia @ Abul Hussain of Village Puran Kuchia under Chhaygaon Police Station in

the District of Kamrup (Rural). The proceedings in G.F.T. (R) Case No.898/2017 is against Md. Kalam Ali, son of Md. Abul Ali of Village Puran

Kushiya under Chhaygaon Police Station in the District of Kamrup (Rural). Contending that there was no fair investigation leading to the reference

and since petitioner is not the same person as the proceedee, learned counsel for the petitioner seeks quashing of the reference proceedings.

On the other hand, Mr. J. Payeng, learned Special Counsel, Foreigner Tribunal submits that the writ petition is premature as no final opinion has been

rendered by the Tribunal as yet. We have heard learned counsel for the parties.

We find that petitioner had filed a petition before the Tribunal contending that his name was different from the proceedee and, therefore, he should be

discharged from the proceedings. By order dated 4.4.2018, the Tribunal did not accept the contention of the petitioner and noted that notices issued by

the Tribunal was served upon the petitioner with the help of the local Gaonburah, who knew him. The petitioner was, thereafter, directed to file written

statement and also allowed him to go on bail.

A close perusal of the order dated 4.4.2018 would go to show that the initial reference was made under the Illegal Migrants (Determination by

Tribunals) Act, 1983 (for short "IMDT Act"), which was registered as IM(D) T Case No.1243/2002 before the Tribunal constituted under the

IMDT Act.

Under the Illegal Migrants (Determination by Tribunal) Rules, 1984 (for short "the Rules"), framed under the IMDT Act, there used to be a

Screening Committee. The enquiry report on conclusion of the enquiry was required to be submitted by the Enquiry Officer to the Screening

Committee. Thereafter, the enquiry report of the Enquiry Officer was scrutinized by the Screening Committee and on being satisfied, the Screening

Committee used to recommend to the concerned Superintendent of Police (Border) for making reference. It was only then that the jurisdictional

Superintendent of Police (Border) used to make the reference. In the instant case, recommendation of the Screening Committee was acted upon by

the jurisdictional Superintendent of Police (Border) leading to the reference way back in the year 2002 under the IMDT Act.

After scrapping of the IMDT Act, the related reference was re-registered under the Foreigners Act, 1946, read with the Foreigners

(Tribunals) Order, 1964. After fifteen years, petitioner has now raised this contention that he is not the same person as the proceedee. Such

contention of the petitioner cannot be entertained, that too, at this stage when he is yet to file his written statement. As noticed above, this proceeding

is continuing since the year 2002 though more than 15 years have gone by in-between. In such

a situation, we feel that filing of interlocutory application, as above, is only a ploy to delay the proceeding and nothing else. However, since the

petitioner is yet to file his written statement, we refrain ourselves from making any further comments. Let the petitioner appear before the Foreigner

Tribunal, Kamrup (Rural) No.1, Ulubari at Guwahati in connection with G.F.T. (R) Case No.898/2017 along with his written statement on 9.5.2018,

whereafter the Tribunal shall proceed with the reference in accordance with law and conclude the same within sixty days from the date of such

appearance. It would be open for the petitioner to raise all grounds which are legally tenable in his written statement, but it is made clear that no

further interlocutory applications shall be entertained by the Tribunal.

Needless to say, if there is any default or delay on the part of the petitioner, Tribunal will be at liberty to pass such order(s) as may be deemed fit and

proper. Writ petition is disposed of. Registry to inform the concerned Foreignersâ?? Tribunal, Deputy Commissioner and Superintendent of Police

(Border). Copy of the order be also furnished to learned Standing Counsel, Election Commission of India and State Co-ordinator, NRC.