
(2019) 02 GAU CK 0091
In the Gauhati High Court
Case No : Writ Petition (C) No. 1142 Of 2019

Malekjan Bibi

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Foreigners Tribunal Order, 1964 — Section 3(5)(f)

Citation : (2019) 02 GAU CK 0091

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

Bench : Division Bench

Advocate : B.U. Laskar, A Ali, J. Payeng, A Verma, G Sarma

Final Decision : Allowed

Judgement

AM Bujor Barua, J

1. Heard Mr. B.U. Laskar, 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), Kamrup, HFT Case No. 1188/2015 was registered against the petitioner in the Foreigners Tribunal No.4, Kamrup.

3. As the petitioner appeared before the Tribunal but later on abandoned the proceeding, the ex-parte order dated 12.12.2018 was passed declaring him to be a foreigner.

4. The order of 12.12.2018 in second paragraph provides as under:-

"On receipt of the reference, it was registered as GFT (R) No. 1687/2011, later renumbered as H.F.T. Case No. 1188/2015 and notice was issued. Police could

not serve the notice upon the respondent, personally, as she was not found at her place of residence, inspite of enquiry with the help of local Gaonbura and residents of the village. So, the notice was hanged at a conspicuous place of the village in presence of witness and submitted report."

5. Hanging of the notice at a conspicuous place of the village in presence of witnesses is contrary to the requirement of Rule 3(5)(f) of the Foreigners Tribunal Order, 1964.

6. 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.

7. Accordingly, the order dated 12.12.2018 is set aside. The petitioner shall appear before the Tribunal on 18.03.2019 along with a copy of the writ petition be filed and upon his appearance the final adjournment be done within a period of 60 days therefrom.

8. In the event, the petitioner does not appear or fails to cooperate, the Tribunal further shall be at liberty to pass any order under the law.

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