
(2020) 04 GAU CK 0007
In the Gauhati High Court
Case No : Writ Petition (C) No. 7470 Of 2019

Mazibur Rahman	Vs	APPELLANT
Union Of India And 5 Ors		RESPONDENT

Date of Decision : 28-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 04 GAU CK 0007

Hon'ble Judges : Suman Shyam, J;Hitesh Kumar Sarma, J

Bench : Division Bench

Advocate : H R A Choudhury

Final Decision : Disposed Off

Judgement

Hitesh Kumar Sarma, J

We have heard Mr. M. Alamgeer, learned counsel for the petitioner. We have also heard Mr. J. Payeng, learned Standing Counsel, Foreigners

Tribunal, Ms. G. Hazarika, learned counsel for NRC Coordinator and Union of India and Mr. U.K. Nair, learned counsel for respondent No. 4,

Superintendent of Police (Border), Darrang, Mangaldai.

This writ petition, under Article 226 of the Constitution of India, has been filed praying for setting aside and quashing the impugned ex-parte order,

dated 15-10-2018, passed by the learned Member, 5th Foreignersâ?? Tribunal, Darrang, Mangaldai, in F.T(V) Case No. 590/2016 (S.P. Enquiry No.

739/16, dated 30-04-2016).

We have perused the impugned order declaring the petitioner to be a foreigner of post 1971 stream. On perusal of the impugned order it is found that

on receipt of the notice from the learned Tribunal, the petitioner had appeared

and filed written statement along with documents. Thereafter, inspite of several dates fixed for evidence, the petitioner did not adduce evidence. Therefore, the learned Tribunal held that inspite of reasonable opportunities given, the petitioner did not prove his claim of nationality by adducing necessary evidence. It has also come out from the impugned order that the petitioner had filed his written statement on 01-10-2016 and thereafter, he was absent before the learned Tribunal on several dates with effect from 11-11-2016 to 28-08-2018 with steps through his learned counsel. However, the petitioner remained absent before the Tribunal on 14-09-2018, 24-09-2018 and 04-10-2018 without any steps although last chance was given to him to adduce evidence. Therefore, the impugned order was passed on 15-10-2018 by the learned Tribunal.

In his petition the petitioner has admitted that he could not appear before the learned Tribunal at the stage of evidence due to his illness. He has also cited the ground of his poverty. During the period of his absence, as averred, the petitioner has left for Arunachal Pradesh to earn his livelihood as he was a daily labourer requiring to maintain a family of 12 members.

It appears from the impugned order as well as from the submission made by the learned counsel for the petitioner that the petitioner had filed his written statement along with documents before the learned Tribunal and he remained absent thereafter with steps through his learned counsel, except for the last four dates, before the impugned order was passed. On the last four dates, he was not even represented by his learned counsel resulting, ultimately, in the impugned order.

Considering the fact that the written statement with documents were filed by the petitioner to establish his nationality although he did not adduce evidence to substantiate the same for the reasons indicated in his petition, as mentioned above, this Court is of the view that the ends of justice will be met if the reference is answered on merit giving one last chance to the petitioner to adduce evidence, if any, subject to his deposit of a cost of Rs.1,000/-. Accordingly, the impugned order is set aside.

In view of above, the petitioner is directed to appear before the learned Tribunal within six weeks from today with a copy of this order and to lead evidence in support of his nationality on a date to be fixed by the learned Tribunal subject to deposit of the cost aforesaid. However, it is made clear

that the petitioner be given only one chance by the learned Tribunal and in the event he fails to lead evidence, on the date fixed, no further opportunity shall be given to him.

Since the impugned order is set aside, the petitioner be released from custody forthwith.

The Superintendent of Police (Border), Darrang, Mangaldai, shall take necessary steps for implementation of this order on receipt of a copy to be

produced before him by the petitioner. With the above direction, this writ petition stands disposed of.

Send down the LCR with a copy of this order.