

(2022) 08 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5122 Of 2022

Md. Ekramul Hussain

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 10-08-2022

Acts Referred:

Foreigners? Act, 1946 — Section 9

Citation : (2022) 08 GAU CK 0022

Hon'ble Judges : Manash Ranjan Pathak, J;Malasri Nandi, J

Bench : Division Bench

Advocate : A H Atia, P K Medhi, L Devi, A Verma, A I Ali, K. Phukan

Final Decision : Disposed Of

Judgement

1. Heard Ms. A H Atia, learned counsel appearing for and on behalf of the petitioner; Mr. P K Medhi, learned Central Government Counsel, appearing for the respondent No. 1, Ms. A Verma, learned Standing Counsel, Foreignersâ?? Tribunal, appearing for the respondent Nos. 2, 3, 5 and

6, Ms. K Phukan, learned Government Advocate, Assam, for the respondent No. 4, Mr. A I Ali, learned Standing Counsel, Election Commission of

India, for respondent No. 7 and Ms. L Devi, learned Standing Counsel, NRC, for respondent No. 8.

2. In this petition, the petitioner has challenged the ex parte order dated 06.12.2021, passed by the Foreignersâ?? Tribunal, No. 10th, Nagaon at

Sankardev Nagar, Hojai, Assam, in FT (D) Case No. 1550/2015, corresponding to Case No. F.T./H/3178/2012, arising out of SP(B)â??s F.T. Case

No. 377/2010, by which, the petitioner was declared a foreigner of the 1971 stream. The Tribunal held that in spite of giving adequate opportunity, the

petitioner failed to produce any relevant and trustworthy documents to prove his

citizenship and accordingly declared him a foreigner, who had entered India through Assam, on or after 25.03.1971.

3. Learned counsel for the petitioner claims that the petitioner duly appeared before the Foreignersâ?? Tribunal, after receipt of notice, but because of non-availability of proper documents at the relevant time, he could not appear before the Tribunal for filing the documents in support of his evidence. Learned counsel for the petitioner also submits that inability of the petitioner to appear before the Tribunal on the date so fixed by the Tribunal was because of lack of communication of the petitioner with his engaged counsel. Otherwise, the petitioner was all along ready to appear before the learned Tribunal.

4. We have gone through the order of the learned Tribunal dated 06.12.2021. The said order indicates that the petitioner had appeared before the Tribunal on 28.02.2020 and due to the COVID-19 (first wave) protocol, the said case was re-fixed on 19.06.2020 and the written statement was filed by the present petitioner on 17.11.2020. It also appears that the present petitioner sought adjournment for filing of evidence on 05.12.2020, 18.12.2020 and 04.01.2021 and the evidence-in-chief was filed without any documents on 21.01.2021. Thereafter, the present petitioner sought adjournment for filing of documents in support of his evidence on 17.03.2021, 07.04.2021 and 29.04.2021. Thereafter, due to COVID-19 (second-wave), the case was re-fixed by the learned Tribunal on 05.08.2021. Subsequently, the case was also re-fixed on 26.10.2021. The present petitioner as an opposite party again sought adjournment for filing documents on 26.10.2021, 16.11.2021 and 06.12.2021 (the date on which, the ex parte order was passed by the learned Tribunal).

5. What we have noticed from the above is that it is not the case that the petitioner totally ignored the summons from the Tribunal or was duly negligent towards the proceeding of the Tribunal. From the documents available on record, it appears that attempts were made on the part of the petitioner to collect some documents, because of which, the petitioner took time. As regards the subsequent dates, the petitioner remained absent.

6. We have also noticed that there was some mis-information between the petitionerâ??s counsel and him, after filing of the written statement and evidence-in-chief for which he was shown absent in the matter and the learned

Tribunal passed the impugned ex parte order on the ground that the petitioner failed to discharge the burden casted upon him under Section 9 of the Foreignersâ?? Act, 1946. Though technically, the order of the learned Tribunal could not be faulted with, however, we are aware that this is a very important proceeding dealing with the citizenship of a person and, in the present case, the petitioner, annexing a number of documents submitted that he should be given a chance to prove those documents before the concerned Foreignersâ?? Tribunal, that he is indeed an Indian.

7. In our view, since the matter was proceeded ex parte, the petitioner could not substantiate his claim that he is an Indian and not a foreigner.

8. Be that as it may, Ms A Verma, learned Standing Counsel, FT, has fairly submitted before this Court that she has no objection if the case is remanded to the learned Tribunal, for fresh consideration, subject to payment of cost.

9. In view of above, we are inclined to remand this matter to the concerned Tribunal for a fresh consideration by setting aside the impugned order

dated 06.12.2021, passed by the learned Foreignersâ?? Tribunal, No. 10th, Nagaon at Sankardev Nagar, Hojai, Assam, in FT (D) Case No.

1550/2015.

10. Accordingly, we allow the petition by setting aside the impugned ex parte order dated 06.12.2021, passed by the learned Member, Foreignersâ??

Tribunal No. 10th, Nagaon at Sankardev Nagar, Hojai, Assam.

11. The petitioner shall appear before the learned Member, Foreignersâ?? Tribunal 10th, Nagaon, at Sankardev Nagar, Hojai, Assam, on 31.08.2022,

along with a certified copy of this order and shall submit the relevant documents before the concerned Tribunal, subject to payment of Rs. 2,500/-

(Rupees Two Thousand and Five Hundred Only) to the District Legal Services Authority, Hojai In the event of adducing any such documents and

evidence, as directed above, the learned Tribunal, after considering them, shall proceed with the matter in accordance with law and shall pass an

opinion afresh. Needless to say, in the event of failure on the part of the petitioner to appear before the concerned Tribunal on 31.08.2022 and on the

subsequent dates, as may be fixed by the said Tribunal, the said authority shall be at liberty to pass necessary order(s) as per law.

12. However, since the citizenship of the petitioner has come under cloud, the

petitioner will appear before the Superintendent of Police (Border), Hojai, on or before 30.08.2022, and will furnish a bail bond of Rs. 5,000/- (Rupees Five Thousand Only) with one local surety of the like amount to the satisfaction of the said authority, whereafter the petitioner shall be allowed to remain on bail. On such appearance, the concerned Superintendent of Police (Border), Hojai may obtain necessary information and documentation as required under the Rules, from the petitioner for securing his presence and shall also take steps for capturing the fingerprints and biometrics of the iris of the petitioner. It is also made clear that the petitioner shall not leave the jurisdiction of Superintendent of Police (Border), Hojai, without obtaining prior permission from the said authority and further without giving information about his place of destination and his place of stay, to the Superintendent of Police (Border), Hojai.

13. Registry shall inform the Superintendent of Police (Border), Hojai, about this order forthwith.

14. With the above observations and directions, the writ petition stands disposed of.