
(2019) 01 GAU CK 0055
In the Gauhati High Court
Case No : Writ Petition (C) No. 219 Of 2019

Monir Uddin And Anr

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 28-01-2019

Acts Referred:

Foreigners (Tribunals) Order, 1964 — Rule 3(5)(f)
Foreigners Tribunal Rules, 1964 — Rule 35(f)

Citation : (2019) 01 GAU CK 0055

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

Bench : Division Bench

Advocate : DP Borah

Final Decision : Allowed

Judgement

1. Heard Mr. D.P. Borah, learned counsel for the petitioners, Mr. J. Payeng, learned counsel for the State of Assam, appearing for the Foreigners' Tribunal and Border Areas, Ms. V. Verma, learned Standing Counsel for the authorities under the NRC, Ms. G. Sarma, learned counsel for the authorities under the Union of India.

2. On a reference being made by the Superintendent of Police Barpeta, the IM(D)T Case No. 407/2005 was registered against the petitioners. Upon the IM(D)T Act, 1983, being declared ultra vires by the Supreme Court of India, the reference was transferred to the Foreigners Tribunal No. 4, Barpeta and was renumbered as FT Case No. 1115/2016. By the order, dated 13.11.2017, the final consideration was made by declaring the petitioners to be foreigners.

3. Paragraph 3 of the order dated 13.11.2017 shows that the notice against the petitioners could not be served due to non-availability of the proceedees at their given address. In the circumstances, the process server had served notice by hanging. The order does not clearly shows as to in what manner the hanging was made.

4. We have perused the records produced before the learned Tribunal and from the report of the process server, it is seen that the petitioner could not be found at the given address for the purpose of service of notice and, therefore, the notice was hung.

5. The procedure for service is provided under Rule 3(5)(f) of the Foreigners (Tribunals) Order, 1964. 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.

6. As the notice was served in the manner other than the manner provide under Rule 35(f) of the Foreigners Tribunal Rules, 1964, the order dated 13.11.2017 passed in FTC Case No. 1115/2016 is unsustainable and the same is accordingly set aside.

7. The petitioners shall appear before the Foreigners Tribunal No. 4, Barpeta on 18.02.2019 alongwith copy of the written statement be submitted and thereupon the Tribunal shall give the final consideration within a period of 60 days thereafter.

8. The petition is allowed to the extent indicated above.