
(2018) 04 GAU CK 0075
In the Gauhati High Court
Case No : WP(C) 2394 of 2018

RAFIQUL ISLAM

APPELLANT

Vs

UNION OF INDIA AND 5 ORS.

RESPONDENT

Date of Decision : 18-04-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 04 GAU CK 0075

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan,J

Heard Ms. R Choudhury, learned counsel for the petitioner and Mr. A Kalita, learned Special Counsel, Foreignersâ?? Tribunal (FT). By filing this

petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 31.08.2016 passed by the Foreignersâ?? Tribunal

No.7, Dhubri at Bilasipara in FT 7th Dhubri Case No.77 of 2016 (State of Assam â?"vs- Rofiquel Islam) declaring him to be a foreigner who had

illegally entered into India (Assam) from Bangladesh after 25.03.1971.

A perusal of the order dated 31.08.2016 would go to show that as per report of the process server, the proceedee (petitioner) could not be found in the

given address as he had left his place of residence. Therefore, Tribunal decided to proceed ex-parte. Learned counsel for the petitioner submits that

notice to the petitioner was sent to village- Rowmari under Chapar police station in the district of Dhubri whereas the petitioner had shifted to village-

Dhaknabari under Boitamari police station in the district of Bongaigaon.

Therefore, no notice was served upon the petitioner.

On going through the order dated 31.08.2016, we do not find recording of any finding by the Tribunal that notice was served upon the petitioner either personally or in a substituted manner. If notice was not served, than the impugned order would be vitiated. In such circumstances, we set aside the order dated 31.08.2016.

However, now that the petitioner is fully aware of the proceedings, he shall appear before the Foreignersâ?? Tribunal No.7, Dhubri at Bilasipara in connection with FT 7th Dhubri Case No.77 of 2016 along with his written statement on 15.05.2018 at 10.30 am. Thereafter, Tribunal shall proceed with the reference in accordance with law and conclude the same within a period of 60 days from the date of appearance.

Needless to say, if there is any default on the part of the petitioner henceforth, Tribunal would be at liberty to pass such order as may be deemed fit and proper. Before parting with the record, we make it clear that we have not expressed any opinion on the merit of the case. Registry to inform the concerned Foreignersâ?? Tribunal, Deputy Commissioner and the Superintendent of Police (Border) for doing the needful.

A copy of this order may be furnished to learned Standing Counsel, Election Commission of India and the State Coordinator, NRC. Writ petition stands disposed of.