

(2021) 11 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6105 Of 2021

Sahid Ali

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 22-11-2021

Acts Referred:

Citation : (2021) 11 GAU CK 0049

Hon'ble Judges : N. Kotiswar Singh, J; Malasri Nandi, J

Bench : Division Bench

Advocate : Md. S. Hoque, M. Hoque, S. Devi, P.S. Lahkar, A.I. Ali, G. Sarma

Final Decision : Disposed Of

Judgement

1. Heard Mr. M. Hoque, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned Central Government Counsel appearing for respondent Nos.1 & 4; Mr. A.I. Ali, learned Standing Counsel, ECI for respondent No.2; Mr. G. Sarma, learned Standing Counsel, Foreigners Tribunal appearing for respondent Nos.3, 5 & 6.

2. Considering the nature of the case, we are inclined to dispose of this petition at this stage without examining all the grounds raised by the petitioner in challenging the opinion dated 30.10.2019 passed by learned Member, Foreigners Tribunal (4th), Darrang, Mangaldai in F.T.4th Case No.282/SPR/2017 [F.T. Case No. 80/09, Ref.IM(D)T Case No. 10907/98].

3. It has been submitted that after the petitioner was proceeded in the aforesaid F.T.4th Case No. 282/SPR/2017 [F.T. Cases No.80/09, Ref. IM(D)T Case No. 10907/98] before the Foreigners Tribunal (4th), Darrang, Mangaldai, the petitioner duly appeared before the Tribunal and filed his written statement and documents relied on by him to prove his case.

4. In this regard, learned counsel for the petitioner submits that the petitioner was earlier proceeded by Foreigners Tribunal, Darrang, Mangaldai in F.T. Case No.

64/09 [S.P. Enquiry No. 156/2000] in which by an opinion dated 05.09.2009 rendered by the learned Tribunal and the reference made against him was answered in the negative and against the State.

Thus, according to the learned counsel for the petitioner, as per the aforesaid opinion dated 05.09.2009, the petitioner was not declared a foreigner and as such, the question of declaring the petitioner a foreigner in the subsequent proceeding does not arise in view of the decision of the Hon'ble Supreme Court in Abdul Kuddus Vs. Union of India, [(2019) 6 SCC 604] wherein it has been held that the principle of res judicata will be applicable in the proceeding before the Foreigners Tribunal.

In other words, if an opinion was rendered by the Foreigners Tribunal in respect of a person, the said opinion would be binding on the subsequent proceeding against the same person.

5. In the present case, as claimed by the petitioner that he was earlier proceeded in F.T. Case No.64/09 [S.P. enquiry No.156/2000] and was declared not a foreigner by order dated 05.09.2009 and as such, the opinion would continue to hold the field as regards the status and citizenship of the petitioner and as such, subsequent reference by the authority and the opinion rendered by the Tribunal would not be permissible in law in view of the decision of the Hon'ble Supreme Court rendered in Abdul Kuddus (supra).

6. We have gone through the impugned opinion dated 30.10.2019 passed by learned Foreigners Tribunal (4th), Darrang, Mangaldai in F.T.4th Case No.282/SPR/2017 [F.T. Case No. 80/09, Ref. IM(D)T Case No. 10907/98].

7. On perusal of the said opinion dated 30.10.2019, it is clearly evident that the petitioner had filed a certified copy of the order dated 05.09.2009 passed by the Foreigners Tribunal, Darrang, Mangaldai in F.T. Case No. 64/09 [S.P. Enquiry No. 156/2000], which was exhibited as Ext.1.

8. What we have observed is that the learned Foreigners Tribunal did not examine as to whether the earlier opinion was in respect of same or another person or not. On the other hand, the learned Tribunal went to analyse the finding of the opinion dated 05.09.2009 passed in F.T. Case No.64/09 and found certain apparent contradictions that had been stated in the in F.T. Case No. 64/09 with what had been stated in the present proceeding before it.

9. We are afraid, the Tribunal could not have undertaken such an exercise of considering and re-appreciating the evidence already considered in the opinion dated 05.09.2009 in F.T. Case No.64/09 as the Tribunal is not the appellate or reviewing authority of an earlier opinion of the Tribunal.

10. We have also noted that the decision in Abdul Kuddus (supra) was rendered by the Hon'ble Supreme court on 17.05.2019 and the present opinion was rendered by the Tribunal on 30.10.2019 i.e. after the said in Abdul Kuddus (supra) decision was rendered by the Hon'ble Supreme Court, in which event,

the decision of the Hon'ble Supreme Court could not have been ignored by the learned Foreigners Tribunal.

11. Accordingly, we are of the view that the impugned order dated 30.10.2019 cannot be sustained in law inasmuch as the decision will be hit by the principle of *res judicata* in terms of the decision in Abdul Kuddus (*supra*), which however, will be subject to proof that the present petitioner, namely, Sahid Ali is the same person who was proceeded earlier in F.T. Case No.64/09 [S.P. Enquiry No. 156/2000], which aspect is required to be examined by the Tribunal.

12. It is only when the Tribunal comes to a conclusion that the present proceedee, Sahid Ali is not the same person who was proceeded earlier in F.T. Case No.64/09 [S.P. Enquiry No.156/2000], the Tribunal can examine the matter on merit. If the Tribunal comes to a finding that the present proceedee, Sahid Ali is the same person who was proceeded earlier in F.T. Case No.64/09 [S.P. Enquiry No.156/2000] it would not be necessary any more to proceed with the proceeding and it will close the present proceeding by giving a finding in favour of the petitioner in terms of the earlier opinion dated 05.09.2009 passed in F.T. Case No. 64/09.

13. For the aforesaid reasons, we are not inclined to enter into the any other grounds raised in this petition.

14. Accordingly, the present petition is allowed by setting aside impugned order dated 30.10.2019 passed by the learned Foreigners Tribunal(4th), Darrang, Mangaldai in F.T.4th Case No. 282/SPR/2017 [F.T. Case No. 80/09, Ref. IM(D)T Case No.10907/98] and the learned Tribunal would be required to examine as to whether the present petitioner is the same person who was proceeded in F.T. Case No. 64/2009 and if it is found that the present petitioner is the same person who was proceeded in F.T. Case No.64/09, the proceeding shall be concluded with the finding in his favour that he is not a foreigner but an Indian. It is only when the learned Tribunal comes to a contrary opinion as to the identity of the present petitioner vis-à-vis the petitioner in F.T. Case No.64/09 that the Tribunal can proceed accordance with law.

Accordingly, if the learned Tribunal renders a finding that the present petitioner is not the same person who was proceeded earlier in F.T. Case No.64/09, the present impugned order dated 30.10.2019 will stand revived and the petitioner would be at liberty to approach this Court again for challenging the opinion dated 30.10.2019 passed in F.T.4th Case No.282/SPR/2017 [F.T. Case No.80/09, Ref. IM(D)T Case No.10907/98] as regards other issues raised in this petition.

15. Accordingly, the matter is remanded to the learned Foreigners Tribunal (4th), Darrang, Mangaldai for fresh reconsideration in the light of the observation made by us as above, for which the petitioner will appear before the aforesaid Foreigners Tribunal on or before 22.12.2021.

16. Till such proceeding is concluded, the petitioner shall not be detained subject

to condition that the petitioner shall appear before the Superintendent of Police (Border), Darrang and furnish a bail bond of Rs.5,000/- (Rupees five thousand) 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 Superintendent of Police (Border) may obtain necessary information and documentation as required under the rules from the petitioner for securing his presence. The concerned Superintendent of Police (Border) shall also take steps for capturing the finger prints and biometrics of the iris of the petitioner, if so advised. The petitioner shall not leave the jurisdiction of Darrang District without giving details of the place of destination and his place of stay to the Superintendent of Police (Border), Darrang.

17. As discussed above, only when there is a finding by the learned Foreigners Tribunal that the present petitioner is not the same person who was proceeded in FT Case No.64/09, the impugned order dated 30.10.2019 passed in F.T.4th Case No.282/SPR/2017 [F.T. Case No.80/09, Ref. IM(D)T Case No. 10907/98] shall stand revived in spite of our interference now with the aforesaid order dated 30.10.2019 and the petitioner will be at liberty to challenge the same on other grounds as mentioned above.

18. With the above observations and directions, the present petition stands disposed of.