
(2021) 07 GAU CK 0095

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2802 Of 2021

Samiran Das

APPELLANT

Vs

Union Of India And 4 Ors.

RESPONDENT

Date of Decision : 16-07-2021

Acts Referred:

Citation : (2021) 07 GAU CK 0095

Hon'ble Judges : N. Kotiswar Singh, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : A S Dhillon

Final Decision : Allowed

Judgement

1. Heard Mr. K. Biswakarma, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned Central Government Counsel appearing for

respondent No.1 and Mr. S. C. Keyal, learned Special Counsel, FT for respondent Nos. 2-5.

2. Considering the nature of the case, the present petition is disposed of at this stage without issuing any formal notice to the respondents.

3. The impugned opinion challenged in this petition is an ex-parte order dated 14.06.2018 passed by the learned Member, Foreigners Tribunal-4th,

Silchar, Assam in Case No. FT.4th/96/2015 [I/Case No. 157/2012].

4. It appears that the petitioner failed to appear before the Tribunal to face the cross-examination in spite of warrant of arrest being issued. However,

it is not shown in the impugned order whether the said warrant of arrest was executed or not. If warrant of arrest had been executed, the petitioner

would have been presented before the Tribunal. It appears that the said warrant of arrest was not executed and the Tribunal proceeded to hear the

matter ex-parte.

5. We are of the view that if the warrant of arrest had been issued that ought to have been executed. However, from the impugned order passed on

14.06.2018, it appears that the said warrant of arrest was not executed.

6. Citizenship is a one of the most important rights of a person. By virtue of citizenship, one becomes a member of a sovereign country and becomes

entitled to various rights and privileges granted by law in the country and as such, if any question arises about citizenship of a person, in our opinion,

the same should be adjudicated as far as possible on the basis of merit and on hearing the person concerned rather than on default as had been done in

the present case.

7. Since the petitioner had filed the written statement, we are of the view that the petitioner should be afforded another opportunity to appear before

the Tribunal to prove his case that he is not a foreigner but an Indian citizen.

8. In the present case, it has been submitted by the learned counsel for the petitioner that petitioner has sufficient documents starting from 1965, to

show that he is a descendant of one â??Surendra Chandra Dasâ?, father of the petitioner who had been living in this country and not an immigrant

from Bangladesh.

9. Be that as it may, these are the factual issues which may be best examined by the Tribunal and accordingly, the present petition is allowed by

setting aside the impugned ex- parte order dated 14.06.2018 passed by the learned Member Foreigners Tribunal-4th, Cachar at Silchar in Case No.

F.T. 4th/96/2015 [I/Case No. 157/2012] and the matter is remanded to the Foreigners Tribunal-4th, Cachar at Silchar for fresh consideration.

10. Accordingly, the petitioner shall appear before the Foreigners Tribunal-4th, Cachar at Silchar on or before 16.08.2021.

11. We also make it clear that if the petitioner fails to appear before the Tribunal on or before 16.08.2021, the impugned opinion dated 14.06.2018

passed by the Tribunal which has been set aside by this Court today will stand revived and law will take its own course.