
(2018) 09 GAU CK 0026
In the Gauhati High Court
Case No : Civil Writ Petition No.6181 Of 2018

Sri Balen Ray

APPELLANT

Vs

Union Of India And 5 Ors.

RESPONDENT

Date of Decision : 12-09-2018

Acts Referred:

Foreigners Act, 1946 — Section 9

Citation : (2018) 09 GAU CK 0026

Hon'ble Judges : Manojit Bhuyan, J;Prasanta Kumar Deka, J

Bench : Division Bench

Advocate : P.C. Dey, G. Sarmah, J. Payeng, A.I. Ali, U. Das

Final Decision : Allowed

Judgement

(Manojit Bhuyan, J)

1. Heard Mr. P.C. Dey, learned counsel, Advocate for the petitioner as well as Ms. G. Sarmah, learned CGC for respondent no.1; Mr. J. Payeng,

learned counsel for respondent nos.2 to 4; Mr. A.I. Ali, learned counsel for respondent no.5 and Ms. U. Das, learned counsel for respondent no.6.

2. The petitioner assails the order dated 24.3.2017, passed ex parte by the Foreignersâ?? Tribunal (4th) Dhubri in Case No. F.T-4/233/GRP/2016 as

well as the order dated 15.3.2018 in Petition No.11/2018, rejecting the said petition which was filed for setting aside the ex parte order.

3. Without going into the merits of the case, we propose to set aside the aforesaid orders on limited ground and remand the case for fresh

consideration by the Tribunal. We take notice of the following facts in reaching our conclusion.

4. The initial IMDT Reference Case No. 868/1998 had stood transferred and registered as Case No. F.T-4/233/GRP/2016 consequent upon the

striking down of the Illegal Migrants (Determination by Tribunal) Act, 1983. Accordingly the Foreignersâ?? Tribunal (4th), Dhubri issued notice to

the petitioner on 29.11.2016, which returned with the Service Report on 20.12.2016 that Notice had been duly received by the brother of the petitioner.

Although the petitioner was absent on 10.1.2017 i.e. the date fixed for appearance and written statement, a petition was filed by the engaged counsel of the petitioner. The Tribunal made direction for appearance of the petitioner along with documents, fixing 2.2.2017. On the said date the petitioner

was present and sought time to file written statement on ground that some documents were yet to be collected.

Prayer was allowed, fixing 13.2.2017 for written statement and appearance. Sadly, on the next 3 (three) dates, starting with 13.2.2017, 27.2.2017 and

14.3.2017, the petitioner was absent without steps. It is seen that even the engaged counsel had filed petition to withdraw the Vakalatnama on ground

that the petitioner was not in contact with him. In such a situation, the Tribunal passed order on 24.3.2017 declaring the petitioner to be a foreigner

entering into India after 25.3.1971. The petitioner filed petition for setting aside the ex parte order vide Petition No.11/2018, primarily on the ground

that although the Tribunal had given several opportunities, he remained absent due to â??mental defectsâ??. Along with the said petition, the petitioner

had enclosed a Medical Certificate and a medical prescription. The said petition was dismissed/rejected by order dated 15.3.2018 with observation that

the petition was filed after a period of 9 (nine) months, contrary to the provisions under Order 3A(1) of the Foreigners (Tribunals) Order, 1964.

5. While hearing the present petition, our attention is drawn to the medical prescription dated 1.2.2017 (Page-34) and the Medical Certificate dated

2.2.2017 (Page-32), both issued by one Dr. Upen Rajbongshi, Medical Officer (Ayu.). The said certificate indicates that as the petitioner was

displaying abnormal behaviour and was unable to carry on his normal work, he was advised to continue treatment and to consult a Psychiatric

specialist. This Medical Certificate was also referred to in the petition filed by the petitioner before the Tribunal for setting aside the ex parte order.

On the face of it, the aforesaid medical certificate dated 2.2.2017 justifies the petitionerâ??s absence before the Tribunal on the last three dates i.e.

13.2.2017, 27.2.2017 and 14.3.2017.

6. There can be no debate that the procedure to identify and to declare an individual to be a foreign national cannot be a mechanical exercise. Fair and reasonable opportunity must be afforded which, however, cannot be construed to mean an endless exercise. From the facts in the instant case we are

of the considered opinion that the petitioner was prevented by reasonable cause to make due appearance before the Tribunal on the specific dates.

We are also of the considered opinion that the petitioner must be granted an opportunity to discharge his burden, as required under Section 9 of the

Foreigners Act, 1946, to plead and prove that he is not a foreigner.

7. In view of the above and on the limited ground, the petitioner is found entitled to an opportunity of hearing before the Tribunal. Accordingly, we set

aside the aforesaid orders dated 24.3.2017 and 15.3.2018, with direction to the petitioner to appear before the Foreignersâ?? Tribunal (4th) Dhubri on

28.9.2018, on which date he shall file his written statement without fail. In this regard, the Tribunal will not be required to issue fresh Notice. It is also

made clear that the petitioner shall not default in making appearance on the dates to be fixed by the Tribunal. We also direct that the proceedings in

Case No. FT-4/233/GRP/2016 be brought to a close within 60 (sixty) days from 28.9.2018.

8. To the extent above, the writ petition stands allowed.