

(2024) 09 GAU CK 1100
In the Gauhati High Court
Case No : CrI.A. Of 291 Of 2016

Y. Brajabidhu Singh

APPELLANT

Vs

Nia

RESPONDENT

Date of Decision : 23-09-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Citizenship Act, 1955 — Section 6(A)(3), 6(A)(4)
Citizenship Rules 2009 — Rule 19

Citation : (2024) 09 GAU CK 1100

Hon'ble Judges : Manash Ranjan Pathak, J; Mridul Kumar Kalita, J

Bench : Division Bench

Advocate : N. Sarkar, A. Verma, P. Sharma, H. Kuli

Final Decision : Disposed Of

Judgement

Mridul Kumar Kalita, J

1. Heard Mr. N. Sarkar, learned counsel for the petitioner. Also heard Mr. H. Kuli, learned Standing Counsel, Election Commission of India for respondent No.2. Also heard Ms. A. Verma, learned Standing Counsel, Home Department, Assam for respondent Nos. 3, 7 and 8 as well as Mr. P. Sharma, learned Additional Senior Government Advocate, Assam, appearing for respondent No. 5.

2. This writ petition has been filed by the petitioner, namely, Sri Satish Mondal @ Satish Chandra Mondal, impugning the ex parte Opinion/Order dated 09.05.1988 passed by learned Foreigners Tribunal, Lakhimpur, North Lakhimpur in FT Case No. 859/1987, whereby the petitioner was declared to be a Foreigner, who entered into India (Assam) after 01.01.1966 but before 25.03.1971 and has been ordinarily residing in Assam since then.

3. The facts relevant for consideration of the present writ petition, in brief, are that suspecting the petitioner to be a foreigner, an inquiry was conducted by the In-Charge of Barchola Police Watch Post. After completion of the inquiry, the

inquiry report was submitted before the Superintendent of Police, Lakhimpur, stating that the petitioner is suspected to have entered into India in between 1966 and 24.03.1971. On the basis of the inquiry report, a reference was made by the Superintendent of Police, Lakhimpur before the Foreigners Tribunal, Lakhimpur to ascertain the citizenship status of the petitioner.

4. On receipt of the reference, same was registered as Case No. 859/87 by the learned Foreigners Tribunal No.1, Lakhimpur, North Lakhimpur and notice was issued to the petitioner fixing 21.12.1987 for his appearance and filing his written statement.

5. The petitioner appeared before the learned Foreigners Tribunal No.1, Lakhimpur, North Lakhimpur on 21.12.1987 and prayed for time for filing written statement which was allowed by fixing the next date as 24.01.1988.

6. Thereafter, on four consecutive dates, the petitioner remained absent without steps before the learned Tribunal. On 30.03.1988, when the case was again fixed for submission of written statement, the petitioner was absent without steps and the learned Foreigners Tribunal directed the case to proceed ex parte against the petitioner, fixing the matter on 09.05.1988 for passing ex parte order. Accordingly, on 09.05.1988, by the impugned order, the petitioner was declared to be a foreigner, who came to Assam after 01.01.1966 but before 25.03.1971 who has been ordinarily resident in Assam ever since.

7. Learned counsel for the petitioner has submitted that the petitioner is the son of Late Kalicharan Mandal, who was the citizen of India and who had landed property in Boloma village under Laluk Police Station, where the petitioner has been residing by constructing his own residential house.

8. Learned counsel for the petitioner has submitted that on 24.01.1988, the petitioner went to the learned Foreigners' Tribunal, Lakhimpur, but on that day, the Bench Assistant of the said Foreigners' Tribunal sent him back telling him that the records of the case was not traceable. The learned counsel for the petitioner also submits that though order was passed in the said case on 24.01.1998 later on in the said case, however, his presence was not shown. Thereafter on subsequent dates, the petitioner could not appear before the learned Foreigners' Tribunal, Lakhimpur, as he was suffering from illness.

9. Learned counsel for the petitioner has also submitted that thereafter the petitioner came to know about the ex parte order passed against him only when the police of Laluk Police Station came to his residence and informed his family members about the decision of the Foreigners' Tribunal.

10. It is also submitted by learned counsel for the petitioner that thereafter on advice of his counsel, the petitioner approached the District Foreigners Registration Authority at Tezpur for registration of his name as foreigner. However, the Registering Officer refused to register the name of the petitioner and asked him to get an order from the Court so that his name could be

registered.

11. Learned counsel for the petitioner has also submitted that the petitioner is a person suffering from poverty. Petitioner is a person with very limited source of income and he was ignorant as his counsel did not render him proper legal advice and he was unaware of the fact that his name needs to be registered before the District Foreigners Registration Authority at Tezpur, as no such direction was issued in the impugned order.

12. Learned counsel for the petitioner has submitted that the High Court has the power in exercise of its Writ jurisdiction to permit registration before the Registering Authority even at a belated stage and hence, he prays for allowing the petitioner to get his name registered before the District Foreigners Registration Authority at Tezpur.

13. Learned counsel for the petitioner has cited following rulings of this Court in support of his submission.

i. Md. Matin Ali Vs. Union of India 2019 SCC Online Gau 3160;

ii. Pronoti Bala Sarkar and 3 Ors. Vs. The State of Assam And 3 Ors [judgment dated 11.09.2017 in WP(C) No. 2295/2014]

iii. Banu Das Vs. Union of India And Ors. reported in 2013 (4) GLT 617.

14. On the other hand Ms. A. Verma, learned Standing Counsel, Home Department, Assam has opposed the prayer of the petitioner on the ground that the petitioner has approached this Court belatedly and due to the laches committed by him, the Writ jurisdiction of this Court may not be invoked in assistance of a person, who has approached the Court after much delay. She submits that the petitioner ought to have registered himself before the Registering Authority within 60 (sixty) days of the date of the order dated 09.05.1988 and only in exceptional cases the Registering Authority could have extended the period to 180 (hundred and eighty) days. However, in the instant case, the petitioner has not done so and he has also committed laches in approaching this Court belatedly seeking relief under Writ jurisdiction. Hence, she has submitted that the writ petition may be dismissed.

15. We have considered the rival submissions made by learned counsel for both the sides and have gone through the records of the F.T. Case No. 859/87 which was requisitioned from the learned Foreigners Tribunal No. 1, Lakhimpur, North Lakhimpur in connection with this writ petition.

16. As per Section 6A (3) and (4) of the Citizenship Act, 1955, every person of Indian origin, who came to Assam during the period from 01.01.1966 to 25.03.1971 from the specified territory and has been ordinarily resident of Assam since then, and who has been declared to be a foreigner of the said stream by a competent foreigners tribunal, would have to get himself registered before the competent Registering Authority. Upon such registration, he would

stand disenfranchised for a period of 10 (ten) years, though he would continue to enjoy other rights and privileges as a citizen of India. After expiry of the period of 10(ten) years, he would also regain his voting rights.

17. As per Rule 19 of the Citizenship Rules 2009, the period of registration is 30 (thirty) days, which may be extended up to 60(sixty) days, and in exceptional cases up to 180(hundred and eighty) days, by the registering authority.

18. In the case of "State of Assam Vs. Moslem Mondal" reported in 2013(1) GLT 809, the Full Bench of this Court has held that, if there is a failure of a person declared to be a Foreigner of the said stream to get himself registered within the prescribed period or which is extended, he would be liable to face consequences including deportation, being admittedly a Foreigner. However, in appropriate cases, High Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may permit registration even beyond the period so prescribed.

19. In the instant case, the impugned order was passed ex parte, and though the consequences of declaring the petitioner to be a Foreigner of the stream in between 01-01.1966 to 25.03.1971 would follow, however, it appears that the impugned order does not specifically mention that as a consequence of declaring the petitioner a Foreigner of the said stream, he should get himself registered before the competent Registering Authority within the period prescribed by the Citizenship Rules 2009. After due consideration of the facts and circumstances of this case, we are of the view that it would meet the ends of justice, if the petitioner is permitted to get himself registered as a foreigner belonging to 01.01.1966 to 25.03.1971 stream even at a belated stage.

20. We therefore, direct the petitioner to approach the concerned Foreigners Regional Registration Officer at Lakhimpur at North Lakhimpur, within a period of 30 (thirty) days from the date of this order and upon approaches being made within the said period, the Foreigners Regional Registration Officer, Lakhimpur shall pass appropriate order of registration. After registering the petitioner as foreigner belonging to the said stream, the legal consequences shall follow.

21. With above observation and direction, this writ petition is accordingly disposed of. Return back the records of F.T. Case No. 859/87 to the learned Foreigners Tribunal No. 1, Lakhimpur, North Lakhimpur, along with a copy of this Judgment and Order.

22. The Registry shall also provide with the copy of this Judgment and Order to the Deputy Commissioner, Lakhimpur, North Lakhimpur and the concerned Superintendent of Police (Border), Lakhimpur at North Lakhimpur forthwith for their necessary use.