GAHC010272562023

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7148/2023

MD AFAZUDDIN @ MD AFFAZUDDIN AHMED @ MD ALAUDDIN @ MD ALLA UDDIN
S/O LT. SABED ALI, VILL-BOSUNDHARI, P.S.-JAGIROAD, DIST-MORIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS, NEW DELHI-01

2:THE SUPERINTENDENT OF POLICE (BORDER)
MORIGAON
P.O. AND DIST-MORIGAON
ASSAM
PIN-782105

3:THE DEPUTY COMMISSIONER OF MORIGAON
P.O. AND DIST- MORIGAON
ASSAM
PIN-782105

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

5:THE ASSAM STATE COORDINATOR OF NRC
BHANGAGARH
GUWAHATI-

Advocate for the Petitioner : MR. M A SHEIKH, MS F INTAZ,MS. A BEGUM,MR M H CHOUDHURY

Advocate for the Respondent : DY.S.G.I., SC, ECI,SC, F.T,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR

ORDER

16.11.2026

(R. Mazumdar, J)

Heard Ms. A. Begum, learned counsel appearing for the petitioner and MD. Borpujari, learned C.G.C, for the respondent No.1 Union of India. Also heard Ms. A Verma, learned Standing Counsel, FT & Border Matters, Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No.3; as well as Mr. A.I. Ali, learned Standing Counsel, Election Commission of India, for the respondent No.4.

2. On a reference being made by the Superintendent of Police (Border), Morigaon, the learned Member, Foreigners Tribunal 1st, Morigaon, in F.T. (D) Case No. 01/06, by its opinion dated 21.03.2011, declared the petitioner to be a foreigner under the Foreigners Act, 1946, who had illegally entered into the territory of India (Assam) on or after 25.03.1971. Asserting dissatisfaction with the said opinion dated 21.03.2011, the petitioner has filed this writ petition on 01.12.2023, after more than 12 years and 7 months.

3. A perusal of the TCR along with the impugned opinion dated 21-03-2011 reflects that the petitioner, after having received summons on 16-09-2006, had appeared before the Learned Tribunal on 6-07-2009 along with his engaged counsel and had submitted his written statement denying the allegations

levelled by the State authorities regarding his citizenship. The petitioner remained absent from the proceedings before the learned Tribunal by taking adjournments from 19-04-2010 onwards. The petitioner, according to the impugned opinion, did not make any attempt to prove or exhibit any document by adducing formal evidence, and he had only submitted photocopies of certain documents along with the written statement.

4. The Learned Tribunal had perused the records, heard the arguments of the State, and due to the absence of the petitioner in the proceedings, opined that the petitioner herein had failed to discharge the legal liability cast upon him by the provisions of section 9 of the Foreigners Act, 1946. He was opined to be a foreigner as defined under section 2(a) of the Act of 1946. This opinion faces a challenge in the present writ petition.

5. Ms. Begum, the learned counsel for the petitioner, has submitted that the petitioner could not appear before the Learned Tribunal on the different occasions since he had engaged one Muhammad Rafiqul Islam, Advocate, of the Morigaon District Bar, to conduct his case, and the petitioner had handed over all the relevant papers mentioned in the writ petition to the aforesaid advocate to defend his stand. The learned counsel has submitted that the counsel engaged before the learned Tribunal had submitted the written statement, but he had annexed a photocopy of the voter lists and some other photocopies of the documents which were not specifically mentioned. The learned counsel appearing before us has submitted that in the written statement, there were

several typographical errors. The learned counsel for the petitioner has submitted that it would be necessary on the part of the petitioner to file a corrected and detailed written statement annexing all relevant documents in his defence before the Learned Tribunal, and that, by evaluating the circumstances involved, this court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would set aside the impugned opinion and remand the matter back to the Tribunal to afford an opportunity to the petitioner to file a fresh, detailed and correct written statement before the Tribunal and also afford him an opportunity to adduce evidence to prove his citizenship and thereafter to prove his citizenship.

6. The learned counsel for the petitioner has submitted that the petitioner is a poor person maintaining his livelihood by cultivation on a share basis with the land owners, and it was on the advice of the counsel engaged before the Tribunal that the petitioner did not appear before the Tribunal on all the dates, since he was given to understand that he would be required to appear only on certain dates, which dates the counsel engaged in the learned Tribunal would inform him. The learned counsel for the petitioner has submitted that it was only in the early part of February 2023, when the petitioner went to visit his relatives, that he came to know that the police were searching for him to arrest him in connection with the opinion which was rendered against him, and thereafter he tried to trace out the counsel who had been engaged before the Learned Tribunal, but he could not trace the counsel. Therefore, the petitioner

came to know about the impugned order passed against him on 21-03-2011 only on 2-03-2023.

7. The learned counsel for the petitioner has submitted that after she had been handed over the brief by the petitioner to prefer a writ petition, unfortunately, during the shifting of her chamber she had also misplaced the file and, having traced it again, the petition was prepared and accordingly filed before this court. She has submitted that this is a case where the impugned opinion may be interfered with, and the petitioner be given an opportunity to file a fresh written statement and to adduce evidence before the Learned Tribunal to prove his citizenship.

8. The prayers made by the learned counsel for the petitioner on behalf of the petitioner have been resisted by Ms. A. Verma, learned Standing Counsel, F.T. and Border Matters. Ms. Verma, learned counsel, has submitted that the records would show that the opinion had been delivered in the year 2011 and the copy of the NRC given at Annexure 1 of the writ petition was printed on 4-04-2015, which was much after the opinion had been rendered but prior to the alleged date on which the petitioner claims to have notice of the opinion. Ms. Verma, learned counsel has further submitted that the voter list of 1971 was obtained on 2014, the certified copy of the Jamma Bandi was obtained in the year 2018, the certified copy of the voter list for the year 1985 was obtained in the year 2021, the certified copy of the voter list for the year 1993 was obtained in the year 2020, the Gaon Bura had given the certificate to the petitioner in the

year 2014. The learned counsel has therefore submitted that it would be apparent that even after the opinion had been delivered, the petitioner had been collecting documents and therefore it cannot be presumed that the petitioner was totally oblivious of the proceedings before the Learned Tribunal. The learned counsel has submitted that the continued absence of the petitioner from the proceedings on and from 19-04-2010 would stand proof enough that the petitioner was avoiding the proceedings and therefore, in her submission, the present petition does not merit any consideration and deserves dismissal, being devoid of merits.

9. We have heard the learned counsel for the parties, and we have also gone through the records, including the TCR received on requisition. A perusal of the TCR reflects that the petitioner had remained absent on 22-09-2006, 1-11-2006, 12-12-2006, 10-1-2007, 26-2-2007, as well as on 18-4-2007, on which date the Learned Tribunal had directed the proceedings to be carried on ex parte. The petitioner continued to remain absent, and on 25-9-2008, a petition was filed on behalf of the petitioner praying for setting aside of the order directing the proceedings to be carried out ex parte. The Learned Tribunal noted that no documents to support the allegations of being sick/ill had been placed before the learned Tribunal. By order dated 20/12/2008, the learned Tribunal directed recall of the order dated 25.9.2008, subject to the deposit of cost of Rs. 200/-. The costs were never paid, and the petitioner continued to remain absent, sometimes with an application showing cause, mostly without any such

application.

10. By the order dated 10-01-2011, the Learned Tribunal imposed another cost of Rs. 250/- on the petitioner, allowing a final opportunity to him to adduce evidence. By the order dated 25-01-2011, noticing that the costs had not been deposited, the Tribunal opined that the petitioner was trying to delay the proceedings and therefore proceeded to hear the State in the proceedings. The petitioner remained absent on 17-03-2011, and the impugned opinion was delivered on 21-03-2011.

11. Having gone through the records of the Learned Tribunal, we find that there is variation in the stories sought to be projected in the present petition and in the proceedings before the Learned Tribunal. It is seen that, in the present petition, the petitioner has tried to take a stand that it was on the default of the Learned Counsel engaged by the petitioner for the proceedings before the Tribunal that he could not appear and adduce evidence. The records of the Tribunal reflect that the Counsel for the Petitioner had appeared on several occasions, despite the absence of the petitioner, and had filed applications praying for a grant of time to either file the written statement or to recall the order by which the proceedings were required to be carried out ex parte or to file the evidence. It does not appear to this Court that the story projected in this writ petition is a correct story. The records of the learned Tribunal reveal that enough and more opportunities had been granted to the petitioner to defend himself as a citizen of this Country, which he failed to do by

remaining absent continuously for several days and, moreover, he had also disregarded the orders of the Learned Tribunal when the costs imposed upon him for Rs. 200/- and Rs. 250/- respectively had not been deposited. We have also noticed that the story projected by the petitioner that he was not in knowledge of the orders passed by the Learned Tribunal prior to the year 2023 is also not acceptable, inasmuch as the petitioner has himself brought on record several documents between the period from 2011 to 2023 even as he was claiming that such documents had already been supplied to the Learned Counsel appearing for him before the Learned Tribunal. When the proceedings had been concluded in the year 2011, and the certified copies had been obtained thereafter, we are not in a position to believe the projection of the petitioner that such documents had already been supplied to the Counsel appearing for him before the Learned Tribunal. Thus, the delay of 12 (twelve) years in assailing the impugned opinion remain not explained with an acceptable reason.

12. Rather, we are of the considered opinion that this petition is not filed bona fide and we are in agreement with the opinion of the Learned Tribunal that it has been the constant attempt of the petitioner to delay the proceedings. In exercise of powers under Article 226 of the Constitution of India, we do not find any reason to differ with the opinion of the Learned Tribunal rendered on 21-03-2011 in FT (D) Case No. 01 of 2006 by the learned Member, Foreigners Tribunal, 1st Morigaon, Assam.

13. Accordingly, the present writ petition is dismissed. The consequences of the dismissal will follow. The records of the learned Tribunal be returned expeditiously along with a copy of this order.

JUDGE **JUDGE**

Comparing Assistant