

GAHC010012672024



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

**Case No. : WP(C)/365/2024**

JAHAR ALI @ JAHAR ALI PRAMANIK  
S/O- LT. SAFAR PRAMANIK @ SATAR PRAMANIK,  
VILLAGE- ALOMGANJ PT. IX,  
P.O.- ALOMGANJ, P.S.- GAURIPUR,  
DIST.- DHUBRI, ASSAM,  
PIN- 783339.

VERSUS

THE UNION OF INDIA AND 5 ORS  
REPRESENTED BY THE MINISTRY OF HOME AFFAIRS,  
GOVT. OF INDIA, NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA  
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER  
INDIA

NEW DELHI. 110001.

3:THE STATE OF ASSAM  
REPRESENTED BY THE GOVT. OF ASSAM

HOME DEPARTMENT  
DISPUR

GHY-6.

4:THE STATE COORDINATOR  
ASSAM  
NATIONAL REGISTER OF CITIZENS

BHANGAGARH

GHY-5.

5:THE SUPERINTENDENT OF POLICE(B)  
DHUBRI  
DIST.- DHUBRI  
ASSAM  
PIN- 783301.

6:THE DISTRICT COMMISSIONER  
DHUBRI  
DIST.- DHUBRI  
ASSAM  
PIN- 783301

**Advocate for the Petitioner : MD A HUSSAIN**

**Advocate for the Respondent : DY.S.G.I.**

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**08.05.2024**

*(Mridul Kumar Kalita, J)*

- 1.** Heard Mr. M. Hoque, learned counsel appearing for the petitioner and Ms. S. Barua, learned Central Government Counsel for the respondent No.1, Union of India. Also heard Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent No. 2, Ms. A. Verma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 3 & 5 as well as Mr. R. Talukdar, learned Government Advocate, Assam for the respondent No.6.
  
- 2.** This writ petition has been filed by the petitioner, namely, Jahar Ali @ Jahar Ali Pramanik impugning the *ex-parte* order, dated 27.08.2018, passed by the learned, Foreigners Tribunal No. 4<sup>th</sup>,

Dhubri in Case No. F.T.4/161/GPR/2018 whereby, the petitioner was declared as a Foreigner under the Foreigners Act, 1946, who had illegally entered into India on or after 25.03.1971.

**3.** The facts relevant for consideration of this Writ Petition, in brief, are as follows:-

A communication was made by the Electoral Registration Officer (ERO) of 24 No. Gauripur Assembly Constituency to the Superintendent of Police, expressing doubt about the nationality of the present petitioner and through the same it was requested that the matter (Reference 'D' Voter Case No. 330/D/06) be referred to the Foreigners Tribunal, Dhubri under the Illegal Migrants (Determination by Tribunals) Act, 1983 (during its force) to decide the question as to whether the present petitioner is a citizen of India or not. Later on, after striking down of the IM(D)T Act, 1983 by the Hon'ble Supreme Court in the Case of "*Sarbananda Sonowal -vs- Union of India and Another*," reported in (2005) 5 SCC 665 and as per the direction of the Hon'ble Apex Court passed therein, the said case was transferred to the Foreigners Tribunal No. 1, Dhubri and thereafter, it was again transferred to the Foreigners Tribunal No. 4<sup>th</sup>, Dhubri.

**4.** After registration of the case, notice was issued to the present petitioner by the Foreigners Tribunal No. 4<sup>th</sup>, Dhubri, on 12.06.2018, directing him to appear before it on 24.07.2018 and to submit written statement/reply with all relevant documents in support of his claim regarding his Indian nationality as required under Section

9 of the Foreigners Act, 1946. The Foreigners Tribunal, No. 4<sup>th</sup>, Dhubri, on the basis of the service report, of the process server, by order dated 24.07.2018, held that the notice of the case was duly served on the petitioner. Thereafter, the Tribunal had fixed the case on 30.07.2018, 06.08.2018 and 13.08.2018 for filing written statement by the present petitioner. However, when the petitioner remained absent on those dates, the Tribunal, by its order dated 13.08.2018 decided to proceed *ex parte* against the present petitioner and fixed the case on 27.08.2018 for *ex parte* hearing.

**5.** However, on 27.08.2018 also, when the petitioner remained absent, the Foreigners Tribunal No. 4<sup>th</sup>, Dhubri proceeded *ex parte* against the present petitioner and by order dated 27.08.2018, answered the reference by holding that the petitioner failed to discharge his burden to prove that he is a citizen of India and since he remained absent, therefore, having no alternative, the Tribunal opined that the petitioner is a Foreigner, who had entered into India illegally after 25<sup>th</sup> March 1971.

**6.** Learned counsel for the petitioner has submitted that the petitioner is a citizen by birth. It is also submitted by the learned counsel for the petitioner that he was born in the year 1981 at village Alomganj (Panbari) under Gauripur Police Station in the district of Dhubri. He has also submitted that the parents of the petitioners are also citizens of India by birth and were the resident of village Baushkata Pt.I under South Salmara Police Station.

**7.** It is also submitted on behalf of the petitioner that his

grandfather, namely, Late Billal Pramanik had three wives and after the death of two of his wives, namely, Sabiron Bibi and Sabura Khatun, the grandfather of the petitioner had shifted to village Airongjangla Pt.II under Dhubri Police Station wherein his name was recorded in the voters list of 1970.

**8.** Learned counsel for the petitioner has submitted that the name of the father of the petitioner, namely, Safar Pramanik, who had shifted with his other family members to village Alomganj Pt.IX (Panbari) from Baushkata in the year 1980, was recorded in the voters list of 1985.

**9.** It is also submitted by the learned counsel for the petitioner that petitioner's name has been included in the voters list of 2005 at Sl. No. 91 along with his mother at Sl. No. 90, and that without assigning any reason, mark "D" was put against his name.

**10.** Learned counsel for the petitioner has also submitted that on the basis of a wrong and false report doubting his nationality, the case of the petitioner was referred to the Tribunal by the Superintendent of Police, Dhubri, to determine his nationality.

**11.** On the other hand, Ms. A. Verma, learned Standing Counsel, Home Department, Assam has submitted that the petitioner has failed to appear before the Foreigners Tribunal 4<sup>th</sup>, Dhubri, in spite of due service of notice on him and has thus failed to discharge his burden as required under Section 9 of the Foreigners Act, 1946. She has also submitted that the Foreigners Tribunal 4<sup>th</sup>, Dhubri, has correctly arrived at a conclusion of due service of notice on the

petitioner as per provisions of Clause 3(5) of the Foreigners (Tribunals) Order, 1964. Hence, she has submitted that the impugned order dated 27.08.2018 does not warrant any interference by this Court.

**12.** We have considered the submissions made by the learned counsels for both the sides and have also perused the materials available on record carefully, including the case record of F.T. Case No. 4/161/GPR/2018, which was called for from the Foreigners Tribunal (4<sup>th</sup>), Dhubri in connection with this case.

**13.** It appears from the record, that in the instant case, the reference was made by the Superintendent of Police (Border) Dhubri under the IM(D) T Act, 1983 on the basis of the request made by the Electoral Registration Officer (ERO) of 24 No. Gauripur Legislative Assembly Constituency considering his report of the Electoral Registration Officer, made under the IM(D) T Act, 1983 while it was in force.

**14.** It appears from record that in his report dated 21.07.2018, the process server, namely, the head constable Sri Khasuram Roy had reported that he has been informed by the local people that the proceedee has left his residence, therefore, he had affixed the notice on the wall of the house of the proceedee, as shown by the VDP Secretary Joynal Abedin Sarkar, whose signature he took on his report. The Foreigners Tribunal 4<sup>th</sup>, Dhubri had accepted the said report of the process server and held that the notice issued to the petitioner was duly served under clause 3(5)(f) of the Foreigners

(Tribunals) Order, 1964.

**15.** From the records of the case, we have seen that by order dated 24.07.2018 passed in F.T. Case No. 4/161/GPR/2018, the Foreigners Tribunal 4<sup>th</sup>, Dhubri accepted the report of the process server and held that the notice issued to the petitioner was duly served. However, there is nothing on record to show that the Tribunal recorded the statement of the process server as well as the witness concerned regarding service of notice at the residence of the present petitioner. As such we are of the view that it would be wrong to presume that the petitioner was aware about any such service of notice of the case upon him or in his residence, even if the petitioner had changed his address.

**16.** However, from the record we have also seen that the present address of the petitioner as shown in the instant writ petition tally with the address mentioned in the notice issued to him by the Foreigners Tribunal 4<sup>th</sup>, Dhubri. The petitioner claims that he has been residing in the said address till date, but, no notice was served on him. It has also been submitted by the petitioner that he came to know about the *ex parte* order only in the last part of the year 2023, when he met the Booth Level Officer for getting a ration card.

**17.** Under the facts and circumstances of this case we are of the considered opinion that before reaching the conclusion of due service of notice on the petitioner, the Foreigners Tribunal 4<sup>th</sup>, Dhubri ought to have examined the process server and the witness in whose presence the notice of the case was said to be affixed on the wall of

the house of the petitioner. We have already discussed in foregoing paragraphs as to how, in this case, the reference was made. Accordingly, we are of the considered opinion that the petitioner was not afforded reasonable opportunity of showing that he is not a foreigner. As such we hold that the Foreigners Tribunal 4<sup>th</sup>, Dhubri had erred in proceeding *ex-parte* against the petitioner in F.T. Case No. 4/161/GPR/2018 without properly ascertaining the due service of notice issued on him.

**18.** For the reasons discussed in foregoing paragraphs, the impugned *ex-parte* order dated 27.08.2018, passed by the Foreigners Tribunal 4th, Dhubri in F.T. Case No. 4/161/GPR/2018 is hereby set aside and quashed. The F.T. Case No. 4/161/GPR/2018 is remanded back to the Foreigners Tribunal 4th, Dhubri for deciding the reference again from the stage of filing of written statement and written Evidence-in-Affidavit by the present petitioner.

**19.** Since the petitioner has now come to know about the F.T. Case No. 4/161/GPR/2018 regarding his nationality, no further notice in the said case is required to be furnished to him.

**20.** The petitioner shall appear before the Foreigners Tribunal 4<sup>th</sup>, Dhubri on 07.6.2024 along with the certified copy of this order and on that day itself, i.e. on 07.06.2024, he shall file his Written Statement as well as his written Evidence-in-Affidavit, along with all the relevant documents in said F.T. Case No. 4/161/GPR/2018 on the basis of which he intends to prove his nationality.

**21.** However, It is hereby made clear that on failure on the part

of the petitioner to appear before the Foreigners Tribunal 4th, Dhubri on the aforementioned date, i.e. 07.06.2024 and on the dates fixed by it, the Tribunal shall be at liberty to proceed against the petitioner in F.T. Case No. 4/161/GPR/2018 as per provisions of law.

**22.** The Registry shall return the records of the F.T. Case No. 4/161/GPR/2018 with a copy of this order to Foreigners Tribunal 4th, Dhubri, forthwith.

**23.** With the above observations and directions, this writ petition is accordingly allowed.

**JUDGE**

**JUDGE**

**Comparing Assistant**