

GAHC010224752019



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

Case No. : WP(C) 6927/2019

1:BIJOY KUMAR DAS
S/O- LT KAMINI KUMAR DAS, R/O- VILL- RENG RENG JHARONI, P.S.
HOWRAGHAT,, DIST- KARBI ANGLONG, ASSAM

VERSUS

1:UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, DEPTT. OF HOME, NEW
DELHI- 110011

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
DIST- KARBI ANGLONG

4:THE SUPERINTENDENT OF POLICE (B)
KARBI ANGLONG
DIST- KARBI ANGLONG
ASSAM

5:THE ELECTION COMMISSIONER OF INDIA
REP. BY THE SECY. OF THE COMMISSION. H.Q. NEW DELHI

6:THE STATE CO-ORDINATOR
NRC
ACHYUT PLAZA

BHANGAGARH
DIST- KAMRUP (M)
GHY-5
ASSA

Advocate for the Petitioner : MR. P C DEY

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 20-12-2019

Suman Shyam, J

Heard Mr. P.C. Dey, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned CGC appearing for the Union of India, Mr. A. Kalita, learned counsel, Foreigners Tribunal, Ms. A. Verma, learned standing counsel, NRC authority and Ms. B. Das, learned standing counsel, Election Commission of India.

This writ petition has been preferred against the *ex-parte* order dated 22-05-2015 passed by the learned Member, Foreigners Tribunal, Diphu in connection with F.T. Case No. 366/06(C) declaring that the petitioner is a foreigner.

By referring to the statements made in paragraph 11 of the writ petition, Mr. Dey has made an attempt to explain the conduct of his client in his failure to appear before the learned Tribunal even after filing written statement and copies of documents.

We have perused the same. Petitioner's case is that after entering appearance before the learned Tribunal, he was suffering from serious liver and chronic kidney

ailments, as a result of which, he had lost track of the proceeding.

We have noticed that there is substantial delay in filing this writ petition inasmuch as the order assailed in the proceeding was passed on 22-05-2015, i.e. more than four years back. Having regard to the statements made in the writ petition, we are of the view that the petitioner has not succeeded in explaining the delay in approaching the Court in a satisfactory manner. However, we have also noticed that the petitioner had apparently filed his written statement by enclosing photocopies of the documents in support of his claim of citizenship, which includes Voters' List of 1970 containing his name and also the citizenship certificate issued by the competent authority. But in the impugned order, the learned Tribunal has not referred to the statements made in the written statement or the documents filed by the petitioner.

Law requires the proceedee to furnish proof of his citizenship and therefore, the burden of proof will always be on the proceedee. However, even if a proceedee remains absent after filing written statement and documents, the learned Tribunal would be duty bound to take note of the materials available on record before rendering its opinion. The mere fact that the proceedee has remained absent after filing written statement and documents cannot be a justification for the Tribunal to give an opinion against the proceedee without considering the materials brought on record.

In that view of the matter, although we are not convinced with the explanation furnished by the petitioner as regards the delay, yet, this Court is of the view that for ends of justice, the petitioner should be granted one more opportunity to appear before the Tribunal and contest the matter.

We, accordingly, allow the writ petition by setting aside the impugned order dated 22-05-2015.

The petitioner is directed to appear before the learned Tribunal on or before 05-02-2020 and produce a certified copy of this order. On such appearance, the learned Tribunal may proceed with the matter from the stage of evidence and thereafter, dispose of the reference case on merit as expeditiously as possible.

We, however, make it clear that if for any reason the petitioner fails to appear before the learned Tribunal on or before the date fixed above, this order shall stand discharged without any further reference to this Court and the petitioner shall be liable to be deported as a foreigner.

Writ petition is accordingly disposed of.

GS

JUDGE

JUDGE

Comparing Assistant