

GAHC010150502019



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

Case No. : WP(C)/5023/2019

SHYAMAL GHOSE
S/O. SUSIL GHOSE, VILL. ASHUDUBI, P.S. KRISHNAI, DIST. GOALPARA,
ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI.

2:THE STATE OF ASSAM

REP. BY THE COMM AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA

NIRVACHAN SADHAN
ASHOKA ROAD
NEW DELHI-110001.

4:THE OFFICE OF THE STATE CO-ORDINATION OF NATIONAL REGISTER
OF CITIZENSHIP (N.R.C.)
ASSAM
FIRST FLOOR
ACHYUT PLAZA
G.S. ROAD
BHANGAGARH
GUWAHATI-05
DIST. KAMRUP (M)

ASSAM
PIN-781005.

5:THE DY. COMMISSIONER

GOALPARA
ASSAM.

6:THE SUPDT. OF POLICE (B)

GOALPARA
DIST. GOALPARA
ASSAM.

7:THE SUPDT. OF GOALPARA JAIL

GOALPARA
DIST. GOALPARA

Advocate for the Petitioner : MRS. P BARMAN (BORKAKOTI),

Advocate for the Respondent : ASSTT.S.G.I., SC, NRC,SC, ECI,SC, F.T

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 23-02-2026

(K.R. Surana, J)

Heard Ms. P. Barman, learned counsel for the petitioner as well as Mr. G. Sarma, learned standing counsel for the FT, Ms. B. Sarma, learned CGC, Mr. P. Sarmah, learned Addl. Senior Govt. Advocate and Mr. N. Kalita, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for the NRC.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the *ex parte* opinion dated 01.09.2011 passed by the learned Member, Foreigners Tribunal No.1 at Goalpara in F.T. Case No.

1026/G/06, corresponding to Ref. District/ ERO's Case No.FT.100/2006, thereby holding that the petitioner is an illegal migrant of post 1971 stream from Bangladesh.

3. The learned counsel for the petitioner has prayed for remand of the matter back to the said learned Tribunal to give the petitioner an opportunity of contesting the proceedings. Referring to the statements made in paragraph-10 of this writ petition, it is submitted that the petitioner was suffering from illness and therefore could not contest the proceedings.

4. The learned standing counsel for the FT matters has opposed the prayer made in this writ petition.

5. On a perusal of the records of the learned Tribunal, it appears that the said learned Tribunal by the impugned opinion passed by an order dated 23.08.2011, taking note of the adjournment granted to the petitioner, one last chance and no further chance was ordered for the petitioner to face cross-examination of witnesses on a single day. However, the petitioner had remained absent and therefore an *ex parte* opinion dated 01.09.2011 was passed, amongst others, stating that the petitioner remained absent on 05.10.2010, 06.12.2010, 07.02.2011, 28.03.2011, 12.05.2011, 18.06.2011, 20.07.2011 and 23.08.2011. The learned Tribunal disbelieved the petition for adjournment and accordingly, the *ex parte* opinion was passed.

6. It appears from the materials available in the Tribunal' records, that on an earlier occasion the petitioner had assailed the said impugned *ex parte* opinion dated 01.09.2011, by filing WP(C) 6009/2015.

7. It would be relevant to quote the contents of the said order dated

01.10.2015 passed in WP(C) 6009/2015, which is self explanatory:

“Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Ms. M. Goswami, learned State Counsel and Mr. S.C. Keyal, learned ASGI. I have also perused the entire materials on record.

The petitioner is aggrieved by order dated 1.9.2011 of the Foreigners Tribunal, Goalpara passed in FT Case No. 1026/G/06 (Ref. FT Case No. 100/06) (Union of India Vs. Shamal Ghosh). By the said order, passed ex-parte, the petitioner has been declared to be a foreigner.

Referring to the Annexure-10 application under order 9 Rule 13 CPC purportedly filed by the petitioner before the Tribunal on 9.9.2015, it is the case of the petitioner that the said application is yet to be entertained. As to whether the petitioner, in fact, has filed any such petition is for the Tribunal to find out. If in fact, the petitioner has filed such a petition, the learned Tribunal shall pass appropriate order in accordance with law and if no such petition is filed, there is no question of entertaining the said petition.

The petitioner shall appear before the Tribunal on or before 30.10.2015 to press the said petition, if in fact the same has been filed. However, no fresh application shall be entertained by the Tribunal. No opinion is expressed on the merit of the case of the petitioner and the application, if has been filed shall be decided by the Tribunal on its own merit.

The writ petition is disposed of. The Registry shall send down a copy of this order to the learned Court below immediately.

At this stage, it is submitted that the petitioner has already been arrested and detained in the detention camp. To facilitate the petitioner to approach the Tribunal on or before the above stipulated date, the Superintendent of Police (B) Baksa, may release the petitioner from detention camp on furnishing adequate surety and the petitioner will have to report to the SP(B), Baksa, fortnightly. However, before releasing the petitioner from the detention camp, the SP(B) Baksa shall ensure his continued presence till disposal of the proceeding before the learned Tribunal if his application as mentioned above is entertained by the Tribunal.”

8. In the said order dated 01.10.2015, this Court had referred to a petition filed by the petitioner under Order IX Rule 13 CPC on 09.09.2015. The learned Tribunal in its order dated 29.10.2015, after taking note of the contents

of the order dated 01.10.2015 passed in WP(C) 6009/2015, had observed that no such petition dated 09.09.2015, was filed. Moreover, the learned Tribunal had also recorded that the Bench Assistant had stated that no such petition was received on 09.09.2015. Accordingly, the learned Tribunal had held that the question of hearing the petitioner on petition dated 09.09.2015 does not arise. The said order dated 01.10.2015 passed by this Court in WP(C) 6009/2015, and the learned Tribunal's order dated 29.10.2015 in F.T. Case No. 1026/G/06 have both attained finality.

9. On a perusal of the records of the Tribunal, no petition dated 09.09.2015 is found available on record. The said records were also perused by the learned counsel for the petitioner.

10. Having seen that this Court by order dated 01.10.2015, passed in WP(C) 6009/2015, had granted an opportunity to the petitioner of being heard, but as no petition was filed on 09.09.2015, the Court is unable to record its dissatisfaction whatsoever in respect of the order dated 29.10.2015, which has not been put to challenge by the petitioner. As the order dated 29.10.2015 was passed by the learned Member, Foreigners Tribunal 1, Goalpara pursuant to order dated 01.10.2015 passed in WP(C) 6009/2015, this Court in exercise of certiorari jurisdiction has refrained from making any observation against the impugned *ex parte* opinion dated 01.09.2011, as the order dated 01.10.2015 passed by this Court in WP(C) 6009/2015 has attained finality in the meantime. Moreover, the order dated 29.10.2015, passed by the learned Tribunal has also not been assailed.

11. Therefore, we find no merit in this writ petition and the same is dismissed. The consequences of the opinion dated 01.09.2011 would follow.

12. The Registry shall send back the records back to the learned Tribunal along with a copy of the order to be made a part of the record.

JUDGE

JUDGE

Comparing Assistant