

GAHC010153692024



undefined

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

Case No. : WP(C)/3913/2024

MD. JAFAR ALI @ ZAFAR ALI
SON OF RAJAB ALI,
PERMANENT RESIDENT OF VILLAGE- MOHANPUR PART-I,
P.S.- JOGIGHOPA,
DISTRICT- BONGAIGAON.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS,
NEW DELHI. PIN- 110001.

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

NEW DELHI- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI- 781006.

4:THE DISTRICT COMMISSIONER
BONGAIGAON
PIN- 783380.

5:THE SUPERINTENDENT OF POLICE (B)

BONGAIGAON
PIN- 783380
ASSAM.

6:THE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH
GUWAHATI-4

Advocate for the Petitioner : MR A W AMAN, MS SURAYA RAHMAN,SAMIM RAHMAN,MR
S A BARBHUYAN,MR SARFRAZ NAWAZ

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

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

JUDGMENT

This application under Section 226 of the Constitution of India read with Article 227 has been filed challenging the order dated 26.09.2016 passed by the learned Foreigners' Tribunal Bongaigaon No. 2, Abhayapuri in connection with Case No. BNGN/F.T.Case No. 3189/2007 arising out of F.T. Reference Case No. : FT 362/2007.

2. Md. Jafar Ali @ Zafar Ali will hereinafter be referred to as the petitioner. The Union of India, the Election Commission of India, the State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Home Department, the District Commissioner-Bongaigaon, the Superintendent of Police (B)-Bongaigaon[SP(B)in short], the Co-ordinator, National Register of Citizens, Bhangaghar, Guwahati, are arrayed as respondent Nos. 1, 2, 3, 4, 5 and 6 respectively.

3. It is submitted that despite the fact that the petitioner's father and uncle being citizens of India, the petitioner was declared a foreigner, who entered into India from Bangladesh illegally after 25.03.1971. His father and uncle had contested a proceeding initiated by the IM(D)T, Goalpara and an order dated 12.03.2001 was passed and the petitioner's father and uncle were held to be Indian citizens. The petitioner is an Indian citizen by birth. It is submitted that a reference was forwarded by the SP(B), Bongaigaon, doubting the nationality of the petitioner. It is submitted that it has been alleged through the enquiry report that the address in the country of origin of the petitioner is shown as :

Village - Dampara,

Police Station – Kishanganj,

District - Mymensing of Bangladesh.

4. It was concluded by the Inquiry Officer that *'during investigation, it appears in a prima facie manner that the suspect Md. Jafar Ali, S/O Lt. Rajab Ali is an illegal foreigner who has entered India after 25.03.1971.'* It is contended that the petitioner was never approached by any Inquiry Officer or any other authority to enquire about his citizenship. His father who is still alive has been mistakenly reported as deceased in the inquiry report and his father's name is written as Late Rajob Ali. After initiation of the reference by the SP(B), Bongaigaon to the Foreigners Tribunal, Bongaigaon, the same was registered by the Foreigner's Tribunal Bongaigaon No. 2, Abhyapurias BNGN/FT Case No. 3189/2007. It is contended that the grounds were not mentioned when notice was issued as mandated by paragraph 3(1) of the Foreigners (Tribunals) Order, 1964 (Order of 1964 for short), rendering the notice to be a vague document.

5. The notice reflects that *"as the Superintendent of Police of*

Bongaigaon/Chirang District as per Foreigners Tribunal Order (1964) has suspected you/your family to be foreigner of entering Assam from East Pakistan/Bangladesh..."

6. It is contended that the option Bangladesh was also not highlighted to the detriment of the petitioner because migration from East Pakistan is prima facie protected by Section 6-A of the Citizenship Act, 1955 (the Act of 1955 for short). Nonetheless the petitioner appeared before the Tribunal on 19.08.2013 and filed a written statement along with relevant documents (Annexure-3).

7. The petitioner was unable to appear before the Tribunal on subsequent dates as he was suffering from serious skin disease. However, the petitioner finally appeared before the Tribunal on 09.06.2015, but as his skin disease aggravated from 07.09.2015 up-to 05.01.2016, the petitioner was unable to appear before the Tribunal. Finally, the petitioner appeared before the Tribunal on 22.01.2016 but the learned Member of the Tribunal was on leave. Then the petitioner's engaged counsel advised him not to attend the Court and assured that the petitioner would be represented as the petitioner was still suffering from skin disease. The petitioner was assured by his engaged counsel that as his father is declared to be an Indian citizen, the petitioner would also be declared an Indian citizen by the Tribunal. As the petitioner is a poor, naïve and illiterate person, completely oblivious to the nitty-gritties of the legal process, the petitioner relied on the assurance of his engaged counsel.

8. It is contended that after his arrest, the petitioner learnt that he has been declared a foreigner who has illegally entered India from Bangladesh after 25.03.1971. It is earnestly submitted by the petitioner that as he is a *bonafide* Indian citizen and due to circumstances beyond his control, he was unable to adduce evidence in the proceeding. It is thus submitted by the petitioner that

he is being highly prejudiced as he has been declared to be a foreign national despite the fact that he is an Indian citizen.

7. It is further submitted that the petitioner's grandfather Taher Sheikh was a landholder in the year 1959.

The petitioner has submitted a revenue receipt of 1959 and 1964 of the Revenue Estate acquired under the Assam State Acquisition of Jamindaries Act, 1951.

Taher Sheikh was the son of Joman, a resident of Bilasipara village (Annexure-6).

The NRC details of 1951 wherein the petitioner's grandfather's name has been recorded as Taher Sheikh, son of Jaman Sheikh of Village: Suapata (279), House No. 30, Thana Town: Bilasipara of Dhubri district is marked as Annexure – 7.

The petitioner's grandfather passed away in the year 1964 and his grandmother's name was recorded in the legacy data details of 1966 as KorfulNessaBibi - which is an extract of 1966 voters list (Annexure – 8).

His grandmother's name is also recorded in the voters' list of 1970 (Annexure-9).

8. It is further submitted that the petitioner could not provide the copy of the NRC of 1951 and the Legacy data of 1966 along with the voters' list of 1970 before the learned Tribunal but the petitioner provided the voters' list of 1989 as Annexure – II before the Tribunal. He also provided the voters' list of 1997 along with his written statement.

9. It is further submitted that following river erosion, the petitioner and his

family lost their land, house and other valuables in Suwapata, Bilasipara, Dhubri and the petitioner and his family had to relocate at Mohanpur village under Jogighopa Police Station in the Bongaigaon district for a better livelihood. The petitioner has further submitted that his father's name is recorded in the voters' list of 2008 (Annexure-12).

His name was first recorded in the voters' list of 2010 (Annexure-13).

The petitioner's name along with his father's name also appeared in the voters' list of 2011 (Annexure-14).

The petitioner has submitted a certificate issued by the Secretary of PanchaniaKhoragaonGaonPanchayat on 23.03.2015 (Annexure-15).

10. Annexure-16 is the order dated 12.03.2001 passed by the learned Chairman of Illegal Migrants (Determination) Tribunal, Goalpara declaring the petitioner's father and uncle as Indian citizens and not as illegal migrants within the meaning of Clause (c), Sub-Section (I) of Section 3 of the I.M.(D) T Act, 1983.

11. Learned Standing Counsel for FT matters/respondents has submitted that the opinion dated 26.09.2016 requires no interference as the order has been correctly passed. It has been held by the learned Tribunal that the petitioner/opposite party submitted photocopies of some documents along with the written statement which are not admissible in the eye of law. The complaint of the Inquiry Officer reveals that the petitioner is a foreigner who entered India from Bangladesh illegally after 25.03.1971 and he has failed to prove to be an Indian citizen, which is his bounden duty under Section 9 of the Foreigners Act, 1946 (Act of 1946 for short) and thus, the petitioner has miserably failed to discharge his burden.

12. Heard Mr. A.W. Aman, learned counsel for the petitioner. Also heard Ms. N. Bedi, learned counsel appearing on behalf of Mr. P. Barua, learned Standing Counsel for the Election Commission of India, respondent No. 2, Ms. A. Verma, learned Standing Counsel for the FT matters, respondent No. 3 and 5, Mr. P. Sharma, learned Additional Senior Government, Assam appearing for the District Commissioner, respondent No. 4 and Mr. G. Sarma, learned Standing Counsel for the NRC, respondent No. 6.

13. We have given our thoughtful consideration to the submissions at the Bar.

14. Learned counsel for the petitioner has laid stress in his argument that the petitioner could not contest the proceeding due to skin disease. The impugned order dated 25.09.2016, passed in BNGN FT Case No. 3189 of 2007, vis-à-vis, the trial Court record clearly depicts that the petitioner/opposite party was continuously absent on 07.09.2015, 05.10.2015, 05.11.2015, 05.12.2015 and 05.01.2016. On 22.01.2016, the opposite party appeared, but again from 25.02.2016 up to 22.06.2016, the opposite party was absent without steps.

15. Learned counsel for the petitioner has submitted that the naïve opposite party believed that his engaged counsel could be relied upon. It has been ardently argued that the petitioner was suffering from skin disease and this led to his default in appearing before the learned Tribunal. However, it is reflected by the order of the learned Tribunal that photocopies were submitted along with written statements and thus, the petitioner's case was dismissed and he was declared to be a foreigner.

16. Learned counsel for the petitioner has drawn the attention of this Court to the written statement of the petitioner, which clearly reflects that-

- i) the grandfather's name has been recorded in the form and receipt of the revenue estate acquired under the Assam State

Acquisition of Zamindaris Act, 1951,

ii) the petitioner's father's name appears in the Voters' List of 1999 under-

27-No.Bilasipara East LAC,

Sl. No. 1383,

House No. 423,

Village-282 Suwapata,

Part-V, District-Dhubri.

iii) the petitioner's father name appears in the Voters' List of 1997, under-

27-No.Bilasipara East LAC,

Sl. No. 1711,

House No. 654,

Village-282 Suwapata,

Part-V, District-Dhubri.

iv) the petitioner's father name appears in the Voters' List of 2008, under-

35-No.Abhayapuri (SC) LAC,

Sl. No. 24,

House No. 11,

Village-Mohanpur,

Part-I, District-Bongaigaon

-It is further submitted that the petitioner's name appears in the Voters' List of 2010, under-

Sl. No. 32, House No. 11,
35 No. Abhayapuri, South (SC) LAC,
Village No. 239, Mohanpur Part-I,
North Salmara Sub-Division,
District- Bongaigaon

His name also appears in the Voters' List of 2011, under-

Sl No. 36, House No. 11,
35 No. Abhayapuri, South (SC) LAC,
Village – 239, Mohanpur Part-I,
North Salmara Sub-Division,
District-Bongaigaon.

17. All the copies of the Voters' Lists were submitted along with the written statements and, thereafter, the petitioner failed to appear before the Tribunal. The petitioner had the original documents and the petitioner could have easily proved the photocopies by producing the original documents at the stage of evidence.

18. A major discrepancy in the inquiry is clearly reflected by identifying the petitioner as son of Late Rajab Ali, while the petitioner's father Rajab Ali was alive at the time when the petitioner was declared a foreign national. The petitioner's father is alive, even today. The petitioner has prayed for one last opportunity to prove that he is an Indian by birth. He is in detention for 7 years. The Bangladesh address of the petitioner as shown

in Inquiry Report is not a correct address. The petitioner has relied on the decision of the Hon'ble Supreme Court in *Union of India and Others –Vs- R Gandhi & Others*; reported in **(2010) 11 SCC 1**.

19. Relying on the judgment, it is further submitted that the Evidence Act is not required to be strictly followed in cases under the Foreigners' Act.

20 On the contrary, Ms A Verma, learned Standing Counsel, Home and Political Department has submitted that- "**Para-4 of the Foreigners (Tribunals) Order 1964**" reads-

"[4. Powers of Foreigners Tribunals-- The Foreigners Tribunals shall have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and the powers of Judicial Magistrate first class under the Code of Criminal Procedure, 1973 (2 of 1974) in respect of the following matters, namely, –

- (a) summoning and enforcing the attendance of any person and examining him or her on oath;*
- (b) requiring the discovery and production of any document,*
- (c) issuing commissions for the examination of any witness;*
- (d) directing the proceedee to appear before it in person;*
- (e) issuing a warrant of arrest against the proceedee if he or she fails to appear before it.]"*

21. In *R Gandhi's case (supra)*, it was observed that :-

"45.....

(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate

procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.”

22. Ms. A Verma, learned counsel for the Home Department has submitted that according to Section 9 of the Act of 1946, the onus lies on the petitioner/proceedee to prove his pleadings. In this case, the petitioner has failed and has totally neglected to discharge his burden to prove that he is a citizen of India.

23. It is further argued by Ms. A. Verma, learned Standing Counsel for the Home Department that this Court has limited jurisdiction while considering a petition for issuance of writ of certiorari as has been held by the Hon'ble Supreme Court in Central Council for Research in Ayurvedic Sciences &Anr. Vs. Bikartan Das &Ors.reported in (2023) 6 Supreme 141 wherein it has been observed that :

“51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

52. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa and Another, reported in AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:

"7.... In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal.....

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in *King v. Nat Bell Liquors Limited* [(1922) 2 AC 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise.

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction."

53. Relying on *T.C. Basappa (supra)*, the Constitution Bench of this Court in the case of *Hari Vishnu Kamath (supra)*, laid down the following propositions as well established:

"(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous."

25. Further, learned Departmental Counsel Ms. A. Verma has relied on the decision of this Court in *Ayub Ali (Md.) &ors. vs. Union of India &ors.* reported in 2016 (1) GLT 273 wherein it has been held that :-

"14.....

15. That the petitioners did not adduce any evidence is not in dispute. The thrust of the argument of the learned counsel for the petitioners is that the petitioners have been denied reasonable opportunity to enable them to discharge the burden cast upon them by Section 9 of the Act of 1946 and

one more opportunity should be granted to them.

16. Principles of natural justice cannot be put into a strait-jacket formula. It is more than three decades that the issue of influx of foreign nationals has been in public domain in the State of Assam. Process of determination of question of citizenship cannot be a one-way traffic, leaning only in favour of a person whose citizenship is doubted. Interest of the State is also of paramount importance in that unabated influx has the potential to affect the integrity and sovereignty of the country. Citizenship of a person, no doubt, is a very valuable right and should be zealously guarded. However, if a person does not take steps for safeguarding his interest, he does so at his own peril. Right to a fair hearing or principles of natural justice cannot be permitted to lead to a farcical situation and to be an engine for defeating the very object of identification and deportation of foreigners. The petitioners had known about the allegations against them that they are foreigners entering India with any valid documents, at least from 2007, even ignoring the earlier part under the IMDT Act from 1997. The petitioners, all these years, apparently, did not take any step to defend their rights in the Court proceedings. In the circumstances, I am not inclined to grant any further opportunity to the petitioners as any such course of action, according to the perception to the Court, would be self-defeating"

15. On considering the matter in its entirety, we have found no infirmity in the judgment under challenge since it was found well evident that appellants had been granted sufficient opportunity to show that they are citizens of India but they fail to utilize all those opportunities.

16. Being so, we have found that the judgments under challenge does not suffer from any infirmity and as such, the present appeal is liable to be dismissed. Resultantly, the present appeal is dismissed."

26. Learned Standing Counsel for the Home Department Ms. A. Verma has also relied on the decision of this Court in Jonali Das vs. Union of India &ors. reported in 2018 (5) GLT 492 wherein it has been observed that :-

"9. In Azmat Ali @ Amzad Ali Vs. Union of India: 2018 (4) GLT 623 : [WP(C) No.4971/2018] disposed of on 01.08.2018, this Court had observed as follows :-

"It is more than three decades that the issue of influx of foreign nationals has been in public domain in the State of Assam and has engaged the attention of the people. Interest of the State is of paramount importance in that unabated influx has the potential to affect the integrity and

sovereignty of the country. Citizenship of a person, no doubt, is a very valuable right and should be zealously guarded. There is no gainsaying the fact that a person who is alleged to be a foreigner must be given due and reasonable

opportunity to establish that he is a citizen of India. However, if a person does not take steps for safeguarding his interest, he does so at his own risk and peril as grant of opportunity cannot be an endless exercise. Right to a fair hearing or principles of natural justice cannot be permitted to lead to a farcical situation and to be an engine for defeating the very object of identification and deportation of foreigners.”

27. Learned counsel for the Home Department has also relied on the decision of this Court in *Baharul Islam vs. The Union of India* and others in connection with WP(C)/291/2024 wherein vide order dated 23.02.2024 this Court has observed that :-

“25. As regards the case of AsorUddin (supra) and Rajendra Das (supra) cited on behalf of the petitioner, this Court had noticed that the ex-parte orders were set aside in those cases which were based on the facts and circumstances. In the case of AsorUddin (supra), there is a specific finding in paragraph 9 that there were sufficient reasons for the petitioner in that case for not being able to appear before the Tribunal. As regard, the cases of DhaniramLuhar and KalikaKuer, the Hon’ble Supreme Court laid down the requirement of judicial discipline in respect of precedents. There is absolutely no dispute to the

aforesaid proposition and this Court is in humble agreement with such proposition.

However, as observed above, the remand orders in the two cases cited were on the facts and circumstances of those cases and cannot act as a precedent. The Hon’ble Supreme Court in the case of

Padma SundaraRaovs State of T.N. reported in (2002) 3 SCC 533 has laid down that a ratio of the case has to be understood with the facts of that case. For ready reference, the relevant part is extracted herein below:

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on

which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537]. Circumstantial flexibility, one additional or different fact may make a word of difference between conclusions in two cases.”

28. It is further submitted by Ms. A Verma that sufficient opportunity was accorded to the petitioner by the learned Tribunal but the petitioner neglected to appear. Onus lies on the petitioner to discharge his burden and prove that he is a citizen of India. This Court has time and again dismissed such petitions where the apathy of the petitioner was apparent. This is a fit case and this petition ought to be dismissed with costs.

29. Learned counsel for the petitioner has relied on the decision of this Court in Abdul Barek and others vs. The State of Assam and others in connection with WP(C)/2989/2018 wherein vide order dated 05.03.2019 this Court has observed that :-

“7. As the petitioners are declared to be foreigners without appropriate materials on record for an adjudication on merit, we are of the view that the petitioners deserve another opportunity. But at the same time as the petitioners had refused to accept the notice, from that point of view, there cannot be any infirmity in the order dated 28.09.2016.

8. Accordingly, for enabling the petitioners to re-appear before the Tribunal, we impose a cost of Rs. 15,000/- to be deposited before the District Legal Services Authority, Morigaon and upon showing the proof thereof, the petitioners shall appear before the

Tribunal on 01.04.2019. Upon appearance of the petitioner before the Tribunal along with the written statement to be filed, Tribunal shall decide the matter within a period of 60 days thereafter.”

30. Refuting the argument of the learned counsel for the petitioner, it is argued by the learned counsel for the Home Department that the citations referred to by the learned counsel for the petitioner are not relevant to this case, as the decisions referred to by the learned counsel for the petitioner are relating to the decisions where the merits of the case have not been discussed unlike this instant case, wherein the learned Tribunal has decided the case on its merits.

31. Learned counsel for the petitioner has also relied on the decision of this Court in *Birbal Das @ Birbal Biswas vs. Union of India and others* in connection with WP(C)/8647/2018 wherein vide order dated 08.02.2019 it has been observed that :-

“2. On being referred by the Superintendent of Police, Border, Kamrup (M), Guwahati, the FT Kamrup (M) Case No.260/2011 was registered against the petitioner before the Foreigners’ Tribunal Kamrup (Metro) at Guwahati. Before the Tribunal, the petitioner appeared, but in spite of adequate opportunities being given, the petitioner had neither filed any written statement nor any evidence was led. As the reference is statutorily required to be adjudicated within a period of 60 days, the Tribunal had no other option but to declare the petitioner to be a foreigner by the ex-parte order dated 31.10.2011.”

“4. We have heard Mr. R. Hussain, learned counsel for the petitioner and also perused the writ petition. No legally admissible and acceptable reasons have been forwarded as to why the petitioner did not file the written statement and the evidence in spite of adequate opportunities being given. From the said point of view, we do not find any

infirmity in the order of the Tribunal dated 31.10.2011. But, however, as the order was passed ex-parte without the relevant materials being produced by the petitioner and taking into consideration the interest of justice, the petitioner is allowed to once again appear before the Tribunal for an adjudication on merit. But as because the petitioner had abandoned the proceeding without any acceptable reason, the ends of justice would be made that a cost of Rs. 15000/- is imposed on the petitioner to be deposited before the District Legal Services Authority, Kamrup (Metro), Guwahati. Upon the proof of the deposit of cost being produced, the petitioner shall appear before the Tribunal on 06.03.2019 along with a copy of the written statement to be filed. Upon such appearance, the Tribunal shall adjudicate the reference made against the petitioner within a period of 60 days thereof."

32. It is true that the decisions relied upon by the learned counsel for the petitioner are cases where the petitioners have not filed their written statements whereas in this case the petitioner appeared before the Tribunal and filed his written statement. At the same time, this Court cannot be oblivious of the fact that the written statement was filed by the petitioner along with the photocopies of documents. Thus, when the petitioner failed to appear, the learned Tribunal was impelled to pass the order/opinion dated 26.09.2016 and had to rely on the photocopies of the documents which are indeed inadmissible in the eye of law. The documents submitted by the petitioner along with this writ petition also cannot be considered by this Court in the light of decision of the Hon'ble Supreme Court in connection with the decision of Ayurvedic Sciences (supra).

33. It is also submitted by the learned counsel for the petitioner that the petitioner's father is alive.

In the Form – I, enquiry report, petitioner's father is referred to as Late Rajob Ali. During investigation, the statement of petitioner was also recorded and he was identified as Md. Mofar Ali, 26 years, S/O Late Rajob Ali, Village —

MohanparPt – II, Police Station – Jogighopa, District – Bongaigaon, Assam. This error however appears to be an inadvertent error.

34. Learned counsel for the petitioner has also submitted that the petitioner has a good case and for the interest of justice he may be allowed to contest the proceeding. The Court may also consider the fact that the petitioner and his family had to relocate from Suwapata, Bilasipara to Mohanpur as during erosion they lost their land and other valuables in Suwapata, Bilasipara.

35. It is also submitted on behalf of the petitioner that his father and uncle have been declared as Indian citizens vide order dated 12.03.2001 passed by the learned Illegal Migrants (D), Tribunal, Goalpara in connection with Case No. 361/B/D/98 and 336/B/D/98.

36. The negligent conduct of the petitioner is apparent from the records of the Tribunal.

37. Learned counsel for the petitioner has earnestly submitted that the petitioner has been continuously suffering from skin disease and he has not yet recovered.

38. In the wake of the foregoing discussions and for the interest of justice, it appears that the petitioner may be accorded an opportunity to contest the proceeding and place the original documents which the petitioner has relied upon earlier while submitting his written statement as well as to place any other additional documents through which the petitioner is willing to prove that he is a citizen of India and not a foreigner. The petitioner is directed to appear before the learned Tribunal within one month from today without expecting any fresh notice to be served, and the learned Tribunal is directed to make every endeavor to dispose of the proceeding preferably within two months from the date of this order.

39. The petitioner is allowed to once again appear before the learned Tribunal for an adjudication on merits. On failure of the petitioner to appear before the learned

Tribunal within the time allowed, it would be open to the learned Tribunal to treat the petitioner absent on call and to proceed ex-parte against the petitioner.

40. The impugned order dated 26.09.2016 is hereby set aside. It is submitted that at present petitioner is at adetention camp and he shall be released forthwith subject to submissions of two surety bonds from two prominent persons who shall stand as surety subject to the satisfaction of the Superintendent of Police (Border) Bongaigaon and the Superintendent (B) shall verify and satisfy himself as to the authenticity and acceptability of the two sureties to his satisfaction.

41. Upon appearance of the petitioner before the Tribunal, it shall be open for the Tribunal to pass further order as to whether the petitioner has to be kept in detention or not.

42. Petition is partly allowed with cost of Rs.10,000/- (Rupees Ten Thousand) to be deposited before the District Legal Services Authority, Bongaigaon. The petitioner shall appear before the Tribunal within 30 (Thirty) days from today. At the time of appearance before the Tribunal, the petitioner shall submit proof of deposit of cost of rs.10,000/- (Rupees Ten Thousand) to the District Legal Services Authority, Bongaigaon.

42. Send back the original records.

JUDGE

JUDGE

Comparing Assistant