

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

W.P(CrI) No.16 of 2017

Sri Subhash Chandra Roy

..... ***Petitioner***

- Versus -

The Union of India and another

..... ***Respondents***

B E F O R E

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

For the petitioner: Mr. N.N. Karmakar, Advocate

For the respondents: Mr S.C Keyal, ASGI

Date of Hearing : 16.12.2017.

Date of Judgment: **16.12.2017.**

JUDGMENT & ORDER (ORAL)

Heard Mr. N.N. Karmakar, learned counsel for the petitioner and Mr. S.C Keyal, learned counsel appearing for the respondent authorities in the Union of India.

2. The petitioner claims that he is a citizen of India by birth and he was born on 01.01.1961 at Nalapara village under Paneri Police Station of Mongaldoi Sub Division of Darang district. He had education from various institutes in Darang district and the names of his parents also appeared in the NRC of 1951. But, however, the petitioner was arrested by the police from his residence on 28.01.2016 around 7.00 p.m. and took him to Tamulpur Police Station of Nalbari district, where he was detained till 29.01.2016. Thereafter, he was taken to Musalpur Police Station of Nalbari district and subsequently taken to a detention camp in Goalpara District Jail, Assam. Thereafter, the petitioner came to know from the police on 28.01.2016 that he was being

arrested for being deported to Bangladesh in compliance with the order dated 04.09.2013 of the Foreigners Tribunal, Nalbari, Assam in F.T.(Nal) B Case No.2737/2007.

3. Subsequently, the petitioner filed a petition being Misc Case No.9/Baksa/2016 in F.T Case No.287/Baksa/2016 [F.T(Nal) B Case No.2737/2007] for vacating the ex-parte order of 04.09.2013. But the said Misc Case was dismissed by an order dated 16.04.2016. Thereafter the petitioner had approached this Court by way of a writ petition being WP(C) No.3275/2016, inter-alia assailing the order dated 04.09.2013 of the Foreigners Tribunal, Nalbari. But the Division Bench of this Court by an order dated 02.06.2016 had dismissed the said writ petition.

4. Thereafter the petitioner states that he could discover some new circumstances on 20.06.2016 from certain reliable sources that the Central Government had passed an order dated 07.09.2015, which had been published in the Gazette of India dated 08.09.2015. The petitioner submits that under the said notification, the Foreigners (Amendment) Order, 2015 had been incorporated by which paragraph-3A has been newly inserted after paragraph-3 of the Foreigners Order, 1948. Paragraph-3A prescribes that a Hindu, Sikh, Buddhist, Jain, Parsis and Christian, who had entered into India from Bangladesh on or before 31.12.2014 are granted exemption from the application of provisions of Foreigners Act, 1946.

5. Accordingly, the petitioner desired to have a review of the order dated 02.06.2016 of this Court in WP(C) No.3275/2016, for which a Review Petition being Review Petition No.86/2016 has been filed. By the order dated 17.11.2016, the said review petition was dismissed by arriving at a conclusion that the argument advanced on behalf of the review petitioner is diametrically opposite to the stand taken by him in the writ petition. It had been recorded in the order dated 17.11.2016 that even in the review petition, the petitioner had nowhere stated that he had fled from Bangladesh to India because of religious persecution.

6. In the aforesaid background, this habeas corpus petition has been preferred by the petitioner stating that a declaration be made that the detention of the petitioner is an illegal detention and therefore, the petitioner

be released and set at liberty with further direction that the State of Assam pay the petitioner a compensation of Rs.4,50,000/-.

7. In view of the aforesaid factual narration, which shows that the petitioner had been kept in detention pursuant to judicial orders passed by various authorities at different stages, it cannot be accepted that the detention of the petitioner pursuant to such judicial order is an illegal detention.

8. In such view of the matter, the contention of the petitioner that his further detention by the respondent authorities is illegal and he is liable to be set at liberty is found to be unacceptable.

9. However, in this writ petition, the petitioner makes a claim that he has some right under the said notification dated 08.09.2015 to be allowed to remain in India. If it is so, it is for the petitioner to avail any such remedy, if available to him under the law. Merely, because there is a possibility that the petitioner may avail some remedy under the said notification, by itself cannot be a reason that his detention pursuant to the judicial orders passed at different stages be declared to be illegal.

In terms of the above, the writ petition stands dismissed.

JUDGE

Alam