

GAHC010027802018



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

Case No. : WP(C)/864/2018

DALIMON NESSA
W/O- MANURUDDIN, D/O- LT. HAKIM UDDIN SHEIKH @ HAKIM, VILL-
BARBHITHA, P.S. TARABARI, DIST- BARPETA (ASSAM)

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY ITS SECRETARY OF THE MINISTRY OF HOME AFFAIRS, UNION OF
INDIA, NEW DELHI

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI

4:THE STATE COORDINATOR
OF NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA
GUWAHATI SHILLONG ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN-781005

5:THE DEPUTY COMMISSIONER
DIST- BARPETA
P.O.
P.S. AND DIST- BARPETA
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O.
P.S. AND DIST- BARPETA
ASSA

Advocate for the Petitioner : MR. A T SARKAR

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

17.03.2023

(AM Bujor Barua, J)

Heard Mr. AT Sarkar, learned counsel for the petitioner. Also heard Mr. B Chakrabarty, learned CGC for the respondents in the Union of India, Ms. L Devi, learned standing counsel for the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam, and the Superintendent of Police (B) Barpeta and as well as Ms. U Das, learned Government Advocate for the Deputy Commissioner, Barpeta.

2. Mr. AT Sarkar, learned counsel for the petitioner makes a statement that during the pendency of this writ petition, the proceedee/writ petitioner has died.

3. Ms. A Verma, learned counsel for the Home Department, Government of Assam refers to an earlier order of this Court rendered in WP(C)No.7618/2015 dated 07.05.2018 wherein, in paragraph 7 thereof, by following the earlier decision rendered in Bahej Ali Vs. Union of India [WP(C) No. 7526 of 2017], which was decided by the order dated 11.12.2017, it was held that the reference made against a deceased proceedee ought to be returned back to the referral authority i.e., the Superintendent of Police (Border) that the proceedee had died and accordingly direction was issued to make fresh reference against the other family members of the proceedee.

4. We have noticed that in Barhej Ali (supra), the proceeding before the Tribunal was against the petitioner/proceedee therein as well as against his wife Surjyavanu Bibi. When the Tribunal proceeded with the matter on 16.03.2017, the writ petitioner therein was present, but he had not filed a written statement and the Tribunal was informed that Surjyavanu Bibi had died in the meantime. In the circumstance, an opinion dated 20.04.2017 was rendered against the writ petitioner therein holding him to be a foreigner and that opinion was an ex-parte opinion. By the order dated 11.12.2017 in Barhej Ali (supra), the Court allowed the writ petitioner therein another opportunity to appear before the Tribunal and file the written statement, *inasmuch as* the opinion dated 20.04.2017 was an ex-parte order against him. As regards the aspect that the reference made against the deceased Surjyavanu Bibi, wife of Barhej Ali may have abated, the Court took the view that as the proceedee herself had died

during the pendency of the proceeding before the Tribunal, therefore, the reference may be sent back to the referral authority, i.e., Superintendent of Police (Border), Barpeta so as to enable the referral authority to make any further reference(s) against the other persons who may be related to the deceased/proceedee Surjavanu Bibi by drawing lineage from the same father.

5. But in the instant case, we have noticed that the writ petitioner participated in the proceeding before the Foreigners Tribunal No.7 Barpeta, wherein the opinion dated 25.09.2017 was rendered by holding her to be a foreigner and against such grievance this writ petition has been instituted and it is only during the pendency of the writ petition that the person concerned had died.

6. In the aforesaid circumstances, we are of the view that the appropriate course of action would be to close the present writ petition.

7. Writ petition, accordingly, stands closed with the observation that if there is any opinion that had been rendered against the deceased writ petitioner, the same would have no implication, in the event, any further reference is made against any other relatives of the deceased petitioner/proceedee. Such relatives may prove their respective cases on their own merit without being influenced either by the opinion rendered by the Tribunal in respect of the deceased writ petitioner or by the closure of this writ petition on the ground that the writ petitioner had died during the pendency of the writ petition.

JUDGE

JUDGE

Comparing Assistant