

GAHC010052692019



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

Case No. : WP(C)/1797/2019

SIBATON NESSA @ SIRATAN NESSA
D/O- SIRAZ MIYA, W/O- PIYAR ALI, VILL- PATLIKUCHI, P.S. AND DIST-
BARPETA, ASSAM, PIN- 781301

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-1

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1

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

4:THE ASSAM CO-ORDINATOR OF NRC
BHANGAGARH
ASSAM
GHY-5

5:THE DY. COMMISSIONER
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA

DIST- BARPETA
ASSAM
PIN- 781301

7:THE OFFICER-IN-CHARGE
BARPETA P.S.
DIST- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MR. M U MAHMUD

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 22.08.2023

(A.M. Bujor Barua, J)

Heard Mr. M.U. Mahmud, learned counsel for the petitioner and Ms. L. Devi, learned counsel for the respondents No. 1 and 4, being the Union of India and the State Co-ordinator of NRC, respectively; Mr. T. Pegu, learned counsel for the respondent No. 2, being the authorities in the Election Commission of India; Mr. G. Sarma, learned counsel for the respondents No. 3, 6 and 7, being the authorities in the Home Department; Mr. P. Sarma, learned counsel for the respondent No. 5, being the Deputy Commissioner, Barpeta.

2. The petitioner Siraton Nessa @ Siratan Nessa had been referred to the Foreigners Tribunal No. 1, Barpeta for rendering an opinion as to whether she is a foreigner within the meaning of foreigner under the Foreigners Act, 1946, resulting in registration of F.T. Case No. 126/16. The Tribunal rendered an opinion dated 08.11.2018 wherein it is written that the predecessor of the Member who had given a judgment dated 16.03.2017 declaring the petitioner to

be a foreigner. Although a stand was taken that the judgment is an ex-parte order, but the Tribunal found that is not an ex-parte order and accordingly accepted the earlier judgment dated 16.03.2017.

3. We have perused the judgment referred dated 16.03.2017 of the earlier Member of the Foreigners' Tribunal No. 1, Barpeta. Paragraph 2 of the said judgment is extracted as below:

“2. After receiving notice opposite party appeared and submitted written statement claimed to be Indian citizen by birth. She stated that her grandfather's name i.e. Faku Miah and his name appeared in the voter list of 1966, 1970 at serial No 95, 113, house No 29 (both) of village Barpally under Jania L.A.C. She further stated that her father's name i.e. Shiraj Mia and his name appeared in the voter list of 1989, 1997 at serial No 1206, house No 83 at village Barpally under Jania L.A.C. Her name has been declared as 'D' voter since 1997.”

4. In paragraph 3 of the judgment dated 16.03.2017, the Tribunal arrived at is satisfaction that the proceedee although submitted written statement and evidence-in-chief but she was absent during the hearing. In paragraphs 5 to 7 the Tribunal refers to the documents produced by the proceedee to discharge the burden that she is not a foreigner and in paragraph 8, the Tribunal was of the view that as the proceedee had not proved the documents in original, therefore it did not have evidentiary value. Accordingly in paragraph 10, the Tribunal concluded that the petitioner failed to discharge the burden under Section 9 of the Foreigners Act, 1946.

5. However, it is noticed that the proceedings continued before the Tribunal and on 29.08.2017, the Tribunal taking note that the proceedee is an illiterate woman and for the ends of justice, had allowed her to contest the case on merit and given a last opportunity for adducing evidence. Thereafter, it appears that the petitioner had adduced some further evidence of DW1 on 07.11.2017 which is available at page 66 onwards in the writ petition. The evidence of DW2 Siraz

Ali also appears in the records which was made on 14.06.2018.

6. When the matter came before the Tribunal on 08.11.2018, neither the order dated 29.08.2017 granting the petitioner a last opportunity to adduce evidence nor evidence rendered thereafter of DW1 and DW2 on 07.11.2017 and 14.06.2018, respectively were taken note of by the Tribunal and the Tribunal deemed it appropriate that the earlier judgment dated 16.03.2017 itself was a declared judgment and accordingly, accepted the same and declared the petitioner to be a foreigner.

7. The procedure adopted by the Tribunal is unacceptable. If the judgment dated 16.03.2017 was a final judgment by the Tribunal, there ought not to have been any further proceeding as the judgment brings all proceedings to its end. On the other hand, if the Tribunal in its wisdom deemed it appropriate to grant a last opportunity to the petitioner to produce any material by the order dated 29.08.2017, the Tribunal ought to have honoured its own order and when further evidences were rendered and documents were placed, it was the duty of the Tribunal to take note of such materials and thereafter pass an opinion.

8. In view of the impugned opinion dated 08.11.2018, we remand the matter back to the Tribunal to proceed against the petitioner in terms of the order dated 29.08.2017 whereby a last opportunity was given to the petitioner and also by taking note of further materials and evidences that may have been brought on record by the petitioner. The petitioner is also granted liberty to bring in any further material, if so advised. The State respondents in the Home Department may examine the materials/documents produced by the petitioner and submit a report before the Tribunal raising any objection, if so advised. Upon doing the needful, the Tribunal to pass a reasoned order.

9. Accordingly, the opinion dated 08.11.2018 in F.T. Case No. 126/16 is set

aside. The petitioner to appear before the Tribunal on 19.09.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of as indicated above.

Send back the LCR forthwith.

J U D G E

J U D G E

Comparing Assistant