

GAHC010055512020



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

Case No. : WP(C)/2811/2020

REZIA KHATUN @ REZIA KHATUN
D/O- RAHIMUDDIN, W/O- ALAUDDIN, R/O- KORIONI BANGALI, P.S.
TEZPUR, DIST.- SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH THE SECY., TO THE GOVT. OF INDIA, THE MINISTRY OF
POLITICAL AND HOME AFFAIRS, GRIHA MANTRALAYA, NEW DELHI

2:THE STATE OF ASSAM
THROUGH THE SECY.
TO THE GOVT. 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- 110001

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GHY

5:THE DY. COMMISSIONER
SONITPUR
P.O. TEZPUR
DIST.- SONITPUR

ASSAM
PIN- 784001

6:THE SUPERINTENDENT OF POLICE (B)
P.O. TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 78400

Advocate for the Petitioner : MR. S C BISWAS

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

JUDGMENT & ORDER (ORAL)

Date : 09-06-2023

(A.M. Bujor Barua, J)

Heard Mr. F.A. Hassan, 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 Coordinator of NRC, respectively. Also heard Ms. A. Verma, learned counsel for the respondents No. 2 and 6, being the authorities in the Home Department; Mr. A.I. Ali, learned counsel for the respondent No. 3, being the Election Commission of India and Ms. K. Phukan, learned counsel for the respondent No. 5, being the Deputy Commissioner, Sonitpur.

2. The petitioner Rejia Khatun @ Rezia Khatun was referred to the Foreigners' Tribunal No. 1, Sonitpur, Tezpur for rendering an opinion as to whether she is a person who had entered the State of Assam from the specified territory on or after 25.03.1971 and accordingly F.T. Case No. 2854/2012 was registered. The petitioner appeared before the Tribunal and filed a petition dated 19.07.2019 making a prayer that the proceeding be dropped as she was

declared to be not a foreigner in a prior proceeding as per the final order dated 15.02.2018 passed by the Foreigners' Tribunal No. 1, Sontipur, Tezpur in F.T. Case No. 14/2016. Accordingly, the order of the Tribunal in F.T. 14/2016 dated 15.02.2018 was placed before the Tribunal.

3. Before the Tribunal, the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of *Abdul Kuddus Vs. Union of India & Ors., reported (2019) 6 SCC 604*, wherein it was held that the principle of res-judicata would also be applicable in respect of a proceeding under the Foreigners' Tribunal. The Tribunal in the fourth paragraph of its order dated 24.12.2019 in F.T. Case No. 2854/2012 took a view that in *Abdul Kuddus (supra)*, the petitioner therein was declared as a foreigner by the Foreigners' Tribunal which was upheld by the High Court, however as the name appeared in the Draft NRC, therefore there was a contention that the order of the Foreigners' Tribunal declaring him to be a foreigner should be set aside because of the findings of the NRC Authority.

4. Accordingly, the Tribunal arrived at a conclusion that the factual situation in *Abdul Kuddus (supra)* and the present writ petition are different and therefore, the fourth paragraph of the order dated 24.12.2019 was passed which is extracted as below:

“In Abdul Kuddus case he was declared as a Foreigner by the Foreigners Tribunal and it was upheld by the Hon'ble Gauhati High Court. However, his name appeared in the Draft NRC, he therefore contended the order of the Foreigners Tribunal declaring him to be a Foreigner should be set aside because of NRC Authority findings. Hon'ble Apex Court has clarified that in case of such contradiction, order of Foreigners Tribunal shall prevail. As because Foreigners Tribunal have been held to be a quasi judicial body and an appellant authority to NRC findings, it is in that context that observation regarding Res-Judicata was made by the Hon'ble Supreme Court. This is not a position in this case which was factually different from Abdul Kuddus.”

5. In *Abdul Kuddus (supra)*, the Hon'ble Supreme Court had held that the

principle of res-judicata would also be applicable in respect of a proceeding under the Foreigners' Tribunal. The said principle laid down by the Hon'ble Supreme Court was not related to any factual circumstance that may have been prevailing in the case of *Abdul Kuddus (supra)*, but it appears more to be a general proposition that the principle of res-judicata would be applicable even in respect of a proceeding in the Foreigners' Tribunal.

6. From such point of view, we are in disagreement with the conclusion of the Tribunal in the fourth paragraph of the order dated 24.12.2019 in F.T. Case No. 2854/2012.

7. The petitioner in the present proceeding takes a plea that by an earlier order of the Foreigners' Tribunal No. 1, Sonitpur, Tezpur dated 15.02.2018 in F.T. Case No. 14/2016, the same petitioner Must. Rezia Khatun was declared to be an Indian citizen.

8. The principle of res-judicata requires the satisfaction of two conditions precedent i.e. the earlier proceeding must be between the same parties and secondly, the earlier proceeding must have arrived at a decision between the parties. As regards the second principle that there must be a decision between the parties in the earlier proceeding, we have examined the order dated 15.02.2018 in F.T. Case No. 14/2016 as to whether in the said order there was any decision by the Tribunal. A decision is understood to be a conclusion arrived at by a judicial authority by giving appropriate reasons for arriving at such conclusion. In a conclusion that may have been arrived without any reason, under the law, it cannot be construed to have been a decision.

9. In the circumstance, when we examine the order dated 15.02.2018 in F.T. Case No. 14/2016, it is noticed that in the fourth paragraph of the said order, the Tribunal states that DW1 i.e. the writ petitioner herself had stated that she

was born in the year 1964 in village Korokani under Tezpur Police Station and that the name of her father is Rahimuddin whose name appears in the voters' list of 1966 of village Korokani. The Tribunal further states that DW2 Abdul Barek had also supported her evidence.

10. The DW1 in the said order is the writ petitioner herself meaning thereby, that it is a statement of the petitioner that Rahimuddin of the voters' list of 1966 of village Korokani is her father. DW2 is stated to be the brother of the petitioner. Accordingly, the Tribunal was of the view that the oral evidence of the writ petitioner as DW1 had been corroborated by the voters' list of 1966 of village Korokani as well as the evidence of DW2.

11. However, what is noticed is that there is no conclusion arrived at that Rahimuddin of the voters' list of 1966 of village Korokani is in fact the father of the writ petitioner or that DW2 Abdul Barek who is claimed to be the brother of the writ petitioner is actually the brother. In a proceeding under the Foreigners' Tribunal it is a general claim which is made by referring to a person and claiming that person to be the father, or as a matter of fact any other person by claiming such person to be a brother. But a mere claim in the absence of any supporting evidence that the concerned person is the father or the brother, as the case may be, would be insufficient to arrive at a conclusion that such person is either the father or brother of the petitioner proceedee. Similarly, in the present case whether Rahimuddin of the voters' list of 1966 of village Korokani is the father of the petitioner or whether the person DW2 Abdul Barek is the brother of the petitioner, are actually the father or the brother, would require further supporting evidence that in fact Rahimuddin of the voters' list of 1966 of village Korokani is the father of the petitioner and that DW2 Abdul Barek is the brother. In the absence of such supporting evidence, it would be a mere

presumption that Rahimuddin is the father and DW2 Abdul Barek is the brother of the petitioner. Any conclusion based upon a presumption cannot be accepted to be a conclusion based on reason.

12. Accordingly in the absence of any such supporting evidence before the Tribunal, the order dated 15.02.2018 in F.T. Case No. 14/2016, cannot be understood to be a decision rendered by the Tribunal that the petitioner is not a foreigner. In the absence of any reasoned conclusion, we are unable to accept that the order dated 15.02.2018 in F.T. Case No. 14/2016 is a decision between the parties.

13. In view of the above, the claim of the petitioner that the present petition is barred by the principle of res-judicata would have to be rejected and accordingly, we remand the matter back to the Tribunal. The petitioner to appear before the Tribunal on 14.07.2023, and upon such appearance to prove her case on merit that she is an Indian citizen.

14. Upon doing the needful, the Tribunal to pass a reasoned order.

Writ petition stands disposed of as indicated above.

J U D G E

J U D G E

Comparing Assistant