

GAHC010082982023



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

Case No. : WP(C)/2274/2023

SAFIA KHATOON
W/O KASEN ALI, R/O JAMALPUR, P.S.-DALGAON, DIST-DARRANAG,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF COMMUNICATION, INDIA, NEW DELHI, INDIA-110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZEN (NRC)
ASYUT PLAZA
BHANGAGARH
GUWAHATI-781005
DIST-KAMRUP (M)
ASSAM

5:THE DEPUTY COMMISSIONER

DARRANG
MANGALDAI
DIST-DARRANG
ASSAM

6:THE SUPERINTENDENT OF POLICE (B)
DARRANG
MANGALDAI
DIST-DARRANG
ASSA

Advocate for the Petitioner : MR. R P HAZARIKA

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

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

ORDER

03.05.2023

(AM Bujor Barua, J)

Heard Mr. RP Hazarika, learned counsel for the petitioner. Heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as 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, the Superintendent of Police (B) Darrang, Mangaldai as well as Mr. NK Das, learned Government Advocate for the Deputy Commissioner, Darrang, Mangaldai.

2. The petitioner Safia Khatoon was referred to the Foreigners Tribunal (2nd)

Darrang, Mangaldai for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971. Consequent thereof, F.T(2) Case No.17/18 was registered against the petitioner, resulting in the ex-parte order dated 23.08.2021. The ex-parte order dated 23.08.2021 is extracted as below:

“ORDER

O.P is not present. She has not taken steps.

Record shows that Hon’ble High Court vide order dtd. 08.03.2021 passed in WP(C)No.3339/2019 vacating the Exparte order of this Tribunal has directed the O.P Safia Khatun to appear before this Tribunal on or before 25.03.2021 with warning that in default of her appearance exparte order of this Tribunal shall stands revived.

It is seen that O.P. has neither appeared nor taken any steps till date and violated the order of Hon’ble High Court. As such I am inclined to revive the exparte order of this Tribunal dtd. 10.09.18 as per order of Hon’ble High Court.

Accordingly exparte order dtd. 10.09.18 declaring the O.P as foreigner of post 1971 is hereby stands revived and case is disposed of accordingly.

Inform all concerned for information and necessary action.”

3. A reading of the order makes it discernible that earlier also due to non-appearance of the petitioner before the Tribunal an ex-parte order was passed against her and being aggrieved she instituted WP(C)No.3339/2019 with a prayer that the ex-parte order be vacated and the petitioner be given an opportunity to establish her citizenship on merit. Accordingly, this Court vide order dated 08.03.2021 passed in WP(C)No.3339/2019 vacated the ex-parte order directing the petitioner to appear before the Tribunal on or before 25.03.2021 with a warning that in default of her appearance, the ex-parte order

shall stand revived.

4. However, inspite of the further opportunity being given by this Court in the order dated 08.03.2021 in WP(C)No.3339/2019, the petitioner again defaulted from appearing before the Tribunal and remained absent without any acceptable reason, resulting in the subsequent ex-parte order dated 23.08.2021 passed in F.T(2) Case No.17/18.

5. We do not find any legal infirmity in the ex-parte order dated 23.08.2021 passed in F.T(2) Case No.17/18, *inasmuch as*, the petitioner herself refrained from appearing in the Tribunal twice without any acceptable reason. But, however, for the interest of justice, the petitioner is given further opportunity to appear before the Tribunal to establish her citizenship. But because of her conduct that she had defaulted twice that too after an earlier opportunity being given by this Court, a cost of Rs.10,000/- be paid by the petitioner before the District Legal Services Authority, Darrang, Mangaldai and the petitioner would be allowed to appear before the Tribunal only upon showing the proof of payment of the cost being paid.

6. Accordingly, the ex-parte order dated 23.08.2021 passed in F.T(2) Case No.17/18 is set aside and the matter stands remanded back to the Foreigners Tribunal (2nd) Darrang, Mangaldai for an adjudication on its own merit.

7. The petitioner shall now appear before the Tribunal on 14.06.2023.

8. In the event, the petitioner appears before the Tribunal, the Tribunal to decide the matter on its own merit and if the petitioner does not appear before the Tribunal, the Tribunal would be at liberty to pass any order as may be admissible under the law.

9. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant