

GAHC010088222023



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

Case No. : WP(C)/2451/2023

CHAYNA BIBI
D/O- LATE JAYDAR ALI,
W/O- LATE BAKKAR ALI ,
R/O- VILLAGE MOINAGURI,
P.O- SHAKTI ASHRAM,
P.S- FAKIRAGRAM,
DIST- KOKRAJHAR, ASSAM, PIN-783354

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS , NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DEPUTY COMMISSIONER
P.O AND DIST- BONGAIGAON
ASSAM
PIN-783380

4:THE SUPERINTENDENT OF POLICE (B)
P.O AND DIST- BONGAIGAON
ASSAM
PIN-783380

5:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

6:THE NATIONAL REGISTER OF CITIZENS

REP. BY THE COORDINATOR

ACHYUT PLAZA
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M

Advocate for the Petitioner : MR. S Ali

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

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

ORDER

22.05.2023

(AM Bujor Barua, J)

Heard Mr. S Ali, learned counsel for the petitioner. Also 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 as well as the Superintendent of Police (B) Bongaigaon and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Bongaigaon.

2. The petitioner Chayna Bibi was referred to the Foreigners Tribunal No.1

Bongaigaon for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in registration of BNGN/FT/Case No.1704/07 arising out of I/C Ref.No.375/05.

3. The petitioner received notice from the Tribunal and appeared, but on the subsequent dates had refrained from appearing before the Tribunal on her own volition and without any acceptable cause which resulted in the BNGN/FT/Case No.1704/07 arising out of I/C Ref.No.375/05 by declaring the petitioner to be a foreigner.

4. Being aggrieved, this writ petition is instituted.

5. In the facts of the case, we do not find any infirmity in the ex-parte order dated 16.12.2015, but, however, for the interest of justice, as the opinion is rendered ex-parte, we allow the petitioner another opportunity to appear before the Tribunal and present her case on merit. Accordingly, the ex-parte order dated 16.12.2015 in BNGN/FT/Case No.1704/07 arising out of I/C Ref.No.375/05 is set aside and the matter is remanded back to the Foreigners Tribunal No.1 Bongaigaon for an adjudication on its own merit.

6. The petitioner to appear before the Tribunal No.1 Bongaigaon on 22.06.2023.

7. It is stated that the petitioner/proceedee is under detention in the detention camp at Goalpara. Accordingly, we direct the Superintendent of Police

(B) Bongaigaon to release the petitioner forthwith, so as to enable her to appear before the Tribunal at Bongaigaon. The Superintendent of Police (B) Bongaigaon, while releasing the petitioner/proceedee may obtain necessary information and documentation from her as required under the Rules for securing her presence. The Superintendent of Police (B) Bongaigaon shall also take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner.

8. It is made clear that the petitioner shall not leave the jurisdiction of Bongaigaon district without giving details of the place of destination and his/her place of stay to the Superintendent of Police (B) Bongaigaon.

9. It is further made clear that failure on the part of the petitioner to provide the relevant mobile/contact number will warrant recalling of this release order.

10. However, for the conduct of the petitioner in not appearing before the Tribunal without any acceptable reason, a cost of Rs.7000/- is imposed on her to be paid before the District Legal Services Authority Bongaigaon and the petitioner would be allowed to appear before the Tribunal on being released from detention on the aforesaid date only upon showing the proof of payment of the cost being paid.

11. It is expected that upon appearance of the petitioner, the Tribunal would take up the matter with true earnest and decide as early as possible without giving any undue opportunity to the petitioner to delay the matter.

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

JUDGE

JUDGE

Comparing Assistant