

GAHC010108802016



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

Case No. : WP(C)/1763/2016

SMTI. DIPTI NAMASUDRA
D/O- LT. RAMESH NAMASUDRA, VILL.- RONGKUT VIA HOWRAGHAT,
DIST.- KARBI ANGLONG, ASSAM.

VERSUS

THE UNION OF INDIA and 5 ORS
TO BE REP. BY THE SECY. HOME, MINISTRY OF HOME AFFAIRS, NEW
DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE SECY. HOME TO THE GOVT. OF ASSAM
DISPUR
GHY- 6.

3:THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY- 6.

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY- 7.

5:THE SUPERINTENDENT OF POLICE BORDER
DIPHU
KARBI-ANGLONG
ASSAM.

6:DY. COMMISSIONER
KARBI ANGLONG

ASSAM

Advocate for the Petitioner : MS.A DAS

Advocate for the Respondent : ASSTT.S.G.I.R 1

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

ORDER

Date : 19.07.2023
(AM Bujor Barua, J)

None appears for the petitioner when the matter is called.

2. Ms. L Devi, learned counsel appears for the respondent no. 1 being the authorities under the Union of India, Ms. A Verma, learned counsel appears for the respondents no. 2 and 3, 4 and 5 being the authorities under the authorities under the Home Department of Government of Assam and Ms. K Phukan, learned counsel appears for the respondent no. 6 being the Deputy Commissioner, Karbi Anglong.

3. The petitioner Dipti Namasudra was subjected to a proceeding before the Foreigners' Tribunal, Diphu for rendering an opinion as to whether she is a foreigner under the Foreigners Act, 1946, resulting in registration of F.T. Case No. 910 of 2006 (D). The proceeding resulted an ex-parte order dated 19.06.2015 declaring the petitioner to be a foreigner.

4. A reading of the order dated 19.06.2015 does not make it discernable that the said order is unacceptable in law in any manner. The petitioner being aggrieved by the ex-parte order dated 19.06.2015 instituted WP(C) No.

3116/2015 which was given a consideration by the order dated 01.06.2015 giving liberty to the petitioner to approach the Tribunal for setting aside the ex-parte order dated 19.06.2015. Accordingly, the petitioner instituted Misc Case No. 10/2015 before the Tribunal but the Tribunal by the order dated 17.12.2015 rejected the application for setting aside the ex-parte order dated 19.06.2015. Being aggrieved, this writ petition WP(C) No. 1763/2016 has been instituted wherein there is an interim order dated 16.03.2016 giving protection to the petitioner.

5. In course of the writ proceeding the petitioner took a stand that she is also available to the protection under the Central Government Notification dated 07.09.2015. Accordingly, by the order dated 06.06.2018 the petitioner was required to file an amended writ petition seeking additional relief as claimed. Accordingly, I.A. (Civil)/2874/2018 was instituted wherein an order dated 22.07.2019 was passed allowing the petitioner to amend the prayer portion of the writ petition. Thereafter, the matter is not listed any further nor any further steps have been taken by the learned counsel for the petitioner.

6. We have taken note that anyway the grievance of the petitioner is against the ex-parte order declaring her to be a foreigner which is dated 19.06.2015 in F.T. Case No. 910 of 2006 (D). As already noted above, we do not find any infirmity in the ex-parte order dated 19.06.2015 but however, we are also of the view that the petitioner deserves an opportunity to prove her case on merit that she is not a foreigner under the Foreigners Act, 1946.

7. In order to protect such legal right of the petitioner, we remand the matter back to the Tribunal for a fresh adjudication on merit on the claim of the petitioner and accordingly, the ex-parte order dated 19.06.2015 is set aside in F.T. Case No. 910 of 2006 (D). But however, for the conduct of the petitioner to

the extent that because of her own laches it resulted in an ex-parte order dated 19.06.2015 the petitioner to pay a cost of Rs.5000/- (Rupees Five Thousand) only to be deposited before the District Legal Services Authority of Karbi Anglong district. The petitioner to appear before the Tribunal on 14.08.2023 after showing proof of payment of cost before the Tribunal and upon her appearance the Tribunal may decide the case on its own merit.

8. In the event the petitioner persists with the claim that she is entitled to the protection under the Central Government Notification dated 07.09.2015 the Tribunal may also look into the said aspect and pass a reasoned order.

9. As the order is passed in the absence of the learned counsel for the petitioner, we require a copy hereof be provided to Ms. A Verma, learned counsel for the Home Department of Government of Assam for transmission of the same to the Superintendent of Police (Border), Karbi Anglong so that the Superintendent of Police (Border), Karbi Anglong can inform the petitioner about the requirement of this order.

Send back the LCR.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant