

GAHC010108902019



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

Case No. : WP(C)/3439/2019

NAZIRA KHATUN @ NAZIRA BEGUM
D/O- NAJIMUDDIN, W/O- TOHIDUR ISLAM, R/O- VILL- PAIKAN PART-II, P.S-
KRISHNAI, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
THROUGH THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, GRIHA MANTRALAYA, NEW DELHI

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 06

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

4:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI

5:THE DEPUTY COMMISSIONER
GOALPARA
P.O- GOALPARA
DIST- GOALPARA
ASSAM

PIN-

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

7:ANJANA NATH
ADVOCATE LAWYERS ASSOCIATION
P.O AND DIST- GOALPARA
ASSAM
PIN

Advocate for the Petitioner : MR. M U MONDAL

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

BEFORE

HON'BLE MR. JUSTICE N. KOTISWAR SINGH

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

(ORAL)

06-01 -2023

[N. Kotiswar Singh, JJ]

Heard Mr. A.K. Azad, learned counsel for the petitioner. Ms. L. Devi, learned counsel appearing on behalf of Mr. RK Dev Choudhury, learned Deputy SGI for respondent no.1; Mr. G. Sarma, learned Special Counsel, F.T. appears for respondent no. 6; Mr. T. Pegu, learned counsel appearing on behalf of Mr. A.I. Ali, learned Standing Counsel, ECI, for respondent

no.3, Ms. L. Devi, learned Standing Counsel, NRC appears for respondent no.4 and Ms. U. Das, learned State Counsel, Assam, appears for respondent nos.2 & 5.

2. Considering the nature of the case and also being not seriously objected by the learned Special Counsel, F.T., we are of the view that the present writ petition can be disposed of at this stage without issuing any formal notice to the respondents.

3 By filing this petition the petitioner has challenged the impugned *ex parte* opinion dated 30.10.2018 passed by the learned Foreigners Tribunal 2nd, Goalpara, Assam, in F.T.(2) Case No.656/K/16 by which the petitioner has been declared as a foreigner with the stream of 25.03.1971 and has prayed for remanding the matter before the concerned learned Tribunal for a fresh consideration.

4. Learned counsel for the petitioner submits that the learned Tribunal passed the impugned *ex parte* opinion dated 30.08.2016 because of the failure on the part of the petitioner to appear before the Tribunal to contest the case though notice was duly served upon her. According to the petitioner, the petitioner after receiving the notice duly appeared before the Tribunal and engaged a counsel, namely, Ms. Anjana Nath (the respondent no.6 herein), but she did not appear before the Tribunal, which was not in the knowledge of the petitioner, resulting in passing of the *ex parte* order. It has also been submitted that the petitioner has lodged a complaint before the Goalpara Lawyers Association against her engaged counsel.

5. We are satisfied that the petitioner had some genuine reason for not being able to appear before the Tribunal, inasmuch as, the engaged lawyer of the petitioner

appeared to have faulted in not duly representing the petitioner before the Tribunal resulting in passing of the *ex parte* order.

6. We have heard learned counsel for the parties and perused the records.

7. The petitioner has relied on certain documents i.e. the sale deed executed on 21.05.1965, which shows the name of the buyer as one Ahamad Ali, son of Md. Sayed Ali, resident of 1 No. Durang Bahjhar, Mouza-Pub Dalgaon, P.S.-Dalgaon, Sub-Registrar Office and District-Darrang, whom the petitioner claims to be her grandfather and the voters lists of 1966 and 1970, where the name of the petitioner's projected grandfather Ahamad appeared under the same village.

8. In view of the above, we are of the opinion that if the petitioner is able to prove the linkage with the said Ahamad, whom she claims to be her grandfather and who appeared to have been settled in the State of Assam at least in the year 1965, she can legitimately claim that she is an Indian and not a foreigner.

9. Since, these documents are to be examined by the Tribunal, we deem it appropriate that the matter be remanded before the Tribunal, so that, the Tribunal can appreciate the evidences which may be adduced by the petitioner in this regard.

10. Under such circumstances and for the reasons discussed above, we allow this petition by setting aside the *ex parte* opinion dated 30.10.2018 passed by the learned Foreigners Tribunal 2nd, Goalpara, Assam, in F.T.(2) Case No.656/K/16 and remand the matter before the Foreigners Tribunal 2nd, Goalpara, so as to enable the petitioner to

appear before the Tribunal to prove that she is an Indian and not a foreigner.

11. The petitioner shall, accordingly, appear before the concerned Foreigner Tribunal within a period of 1 (one) month from today and shall file her written statement and documents and also shall adduce all necessary evidence to prove that she is an Indian and not a foreigner. The Foreigners Tribunal after hearing the parties and after considering the evidence so adduce by the petitioner shall pass opinion in accordance with law.

12. However, it is made clear that since the nationality of the petitioner is already under cloud, till the subsistence of the proceeding before the Tribunal, she will remain on bail on furnishing a bail bond of Rs. 5,000/- (Rupees five thousand) only with one local surety of the like amount to the satisfaction of the Superintendent of Police (Border), Goalpara during the pendency of the proceeding before the Tribunal. The concerned Superintendent of Police (Border) shall also take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner. The petitioner also shall not leave the jurisdiction of Goalpara district without furnishing the details of the place of destination and her place of stay to the Superintendent of Police (Border), Goalpara including relevant contact/mobile number.

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

13. With the above observations and directions, the writ petition stands disposed of.

14. Copy of this order be furnished to the Superintendent of Police (B), Goalpara for doing the needful.

JUDGE

JUDGE

Comparing Assistant