

GAHC010123322019



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

Case No. : WP(C)/3751/2019

MONOWARA BEGUM @ MONOWARA KHATUN
W/O- RASHUN KHAN, D/O- TAFIZ UDDIN, R/O- VILL- GAHER PAM, P.S-
BARPETA, DIST- BARPETA, ASSAM, PIN- 781301

VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, GOVT OF INDIA,
SHASTRI BHAWAN, NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 781006

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

4:THE STATE COORDINATOR
NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G S ROAD
BHANGAGARH
GUWAHATI
ASSAM
PIN- 781005

5:THE FOREIGNERS TRIBUNAL NO.1
BARPETA, ASSAM, DIST- BARPETA
ASSAM, PIN- 781301

6:THE DEPUTY COMMISSIONER
BARPETA, P.O- AND P.S- BARPETA
DIST- BARPETA, ASSAM, PIN- 781301

7:THE SUPERINTENDENT OF POLICE (B)
BARPETA, P.O AND P.S- BARPETA
DIST- BARPETA, ASSAM, PIN- 781301

8:THE OFFICER IN CHARGE
BARPETA POLICE STATION
P.O- BARPETA, DIST- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MS. D GHOSH

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

BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 04.01.2023
(N.KOTISWAR SINGH,J)

Heard Ms. D. Ghosh, learned counsel for the petitioner. Also heard Mr. G. Sarma learned CGC for respondent Nos. 1 and 3, Mrs L. Devi, learned Standing Counsel, NRC for respondent No.4, Ms. A. Verma, learned Standing counsel, Foreigners Tribunal for respondent No.6 and Mr. R. Dhar, learned Govt. Advocate.

2. We have perused the records. Considering the nature of the case, we are of the view that the matter would require reconsideration by the learned

Tribunal. We may not refer to the detailed facts of the case but it would suffice to mention herein that the petitioner having proceeded before the Foreigners' Tribunal No.1, Barpeta, Assam in FT. Case No. 124 /2017 filed his written statement also adduced evidence including by examining his elder brother one Badsha Mia as DW 2 . However at the time of giving of opinion, though the learned Tribunal mentioned about the giving of evidence of said DW 2, it did not analyse or discuss the evidentiary value of the said DW 2 Badsha Mia whom the petitioner projected to be his elder brother.

3. On going through the records, we find that the said Badsha Mia was examined by the Tribunal and he was also duly cross- examined. We also noticed that in the cross-examination he reiterated what he had stated in the examination-in-chief. Thus, his evidence has remained unshaken. If that is so, we are of the view that it is not only relevant, but also a vital and important piece of evidence which could not have been ignored by the learned Tribunal while considering the citizenship of the petitioner. Though the learned Tribunal has mentioned other evidences, we are of the view that we may not go into the same inasmuch as once such relevant and material piece of evidence has not been taken into account by the decision making authority, such decision arrived at would be vitiated on account of non application of mind on the relevant materials.

4. Under the circumstances, we have no other alternative but to set aside the impugned order dated 04.05.2019 passed by the learned Foreigners' Tribunal No.1, Barpeta, Assam as vitiated due to non application of mind on a very vital piece of evidence i.e. the evidence of Badsha Mia to whom petitioner projects to be his elder brother.

5. Accordingly, the matter is remanded to the learned Tribunal for fresh

reconsideration. We would also like to observe that other evidences on record have to be also re-evaluated by keeping in mind the evidence of DW 2 inasmuch as the evidence of elder brother would certainly change the colour, context and contour of the evidentiary value of other evidences. The learned Tribunal must take into account the entire evidences including the evidence of DW 2 holistically before arriving his own conclusion.

6. With the above observation the present petition is allowed. The impugned order dated 04.05.2019 is accordingly set aside. The matter is remanded back to the learned Foreigners' Tribunal No.1 Barpeta for fresh reconsideration. The petitioner shall appear before the Tribunal on 07.02.2023.

7. It is submitted by Ms. D. Ghosh, learned counsel for the petitioner that subsequently, after the opinion was rendered, the petitioner came across some more documents which would support her claim that she is an Indian which she could not rely inasmuch as these were not available at the relevant time. The learned Tribunal shall consider these if any application is made by the petitioner for relying on these documents which shall be considered in accordance with law.

8. Interim order passed by this court on 25.06.2019 shall continue till culmination of the proceeding before the learned Foreigners Tribunal.

JUDGE

JUDGE

Comparing Assistant