

GAHC010131362019



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

Case No. : WP(C)/3992/2019

PRANATI HAZONG @ PRONOTI BALA HAJONG
D/O. LT. SURJO MOHAN HAJONG @ SURJYA HAZONG @ SURJO KANTA
HAJONG, W/O. RABINDRA HAZONG, VILL. HARINATHPUR, P.S.
SILAPATHER, DIST. DHEMAJI, ASSAM, PIN-787057.

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY, HOME AFFAIRS, NEW DELHI, DELHI-01.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE ELECTION COMMISSION OF INDIA
NEW DELHI-01.

4:THE SPECIAL COUNSEL FOR NRC

GOVT. OF ASSAM
GHY.-01.

5:THE SPECIAL COUNSEL OF FOREIGNERS TRIBUNAL

GOVT. OF ASSAM
GHY.-01.

6:THE SUPDT. OF POLICE (B)

DHEMAJI

ASSAM
PIN-787057.

7:OFFICER IN CHARGE

SILAPATHER POLICE STATION
DHEMAJI
ASSAM-787057.

8:THE DY. COMMISSIONER

DIST. DHEMAJI
ASSAM-787057

Advocate for the Petitioner : MR. R C DAS

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

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

ORDER

Date : 13-02-2023

(A.M. Bujor Barua)

Heard Mr. P Buragohain, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondent no. 1 being the authorities under the Union of India, Ms. A Verma, learned counsel for the respondent no. 2, 6 and 7 being the authorities under the Home Department of the Government of Assam, Mr. A Ali, learned counsel for the respondent no. 3 being the authorities under the Election Commission of India and Ms. U Das, learned counsel for the respondent no. 8 being the Deputy Commissioner, Dhemaji.

2. The respondents no. 4 and 5 stand deleted from the array of the respondents inasmuch as the learned counsel cannot be a respondent in the writ petition.

3. The petitioner Pranati Hazong @ Pronoti Bala Hajong had been referred to the Foreigners' Tribunal No. 2, Dhemaji for an opinion as to whether she is a person who entered the State of Assam from the specified territory subsequent to 25.03.1971, resulting in

registration of FT Case No. 275/2017. Before the Tribunal the petitioner had exhibited the relief eligibility certificate issued by the Ministry of Rehabilitation, Government of India dated 19.06.1965. The said relief certificate had been issued in the name of Surjyo Mohan Hajong by providing him to be head of the family.

4. The particulars of the members of the family who had migrated along with the head of the family are as extracted:

“7. Particulars of the members of the family migrated (including the head of the family)

Name	Relationship with head of family	Age/Sex	Education	Previous occupation
1	2	3	4	5

1. Surjo Mohal Hajong	H/F	30/M	IV	Cultivation
2. Smt. Koushala Hajong	wife	21/F	III	„
3. Prodip Kr. Hajong		6/M		„
4. Shrimati Pronoti Bala Hajong		3/F		„

5. A reading of the relief eligibility certificate itself goes to show that the petitioner Pronoti Bala Hajong is the daughter of Surjyo Mohan Hajong in whose favour the relief certificate had been issued as the head of the family.

6. We have also take note of as to under what circumstance the petitioner was referred to the Foreigners' Tribunal for an opinion as to whether she is a person who entered the State of Assam subsequent to 25.03.1971.

7. The records reveal that the reference was as per the '*format for making reference to competent authority in case of suo moto local verification*' issued under the signature of the Electoral Registration Officer, 114 Jonai (ST), LAC. The reference by the Electoral Registration Officer shows that the Election Commission of India had ordered intensive revision of electoral rolls for the 114 (ST) Jonai Assembly Constituency in Assam and that house to house enumeration was done from 2nd August, 2004 to 3rd September, 2004. Paragraph 5 of

the format under the signature of Electoral Registration Officer provides that the Electoral Registration Officer of the Assembly Constituency had doubts about the citizenship of the petitioner and got the matter verified by an '*on the spot local verification*'. The '*format for verification of the officer's report*' which apparently is the local verification report indicated in the reference by the Electoral Registration Officer is also available.

8. A reading of the signed '*format for verification of officer's report*' under the signature of the local verification officer dated 16.02.2005, although the name and designation of the verification officer is not clearly readable, makes it discernable that the format was filled upto the Clause 7 which shows the name of the petitioner, her address, her husband's name, date of birth and the place of birth. The date of birth is shown to be 16.12.1969 and the place of birth to be Nalbari. If the information had already been collected that the petitioner was born on 16.12.1969 and her place of birth is Nalbari, we see no reason as to how the petitioner can be suspected to be person who may have entered the State of Assam from the specified territory subsequent to 25.03.1971. But what is more intriguing is that Clauses 8 to 14 of the format had neither been filled up nor the information required therein had been enquired by the local verification officer and the entire Clauses have been struck out as if such information are not required to be gone into.

9. As an answer to the query at Clause 15, i.e. whether the petitioner had migrated into Assam, the answer given is '*yes*' but without providing for any reason and the opinion formed by the verification officer was that the petitioner had migrated after 25.03.1971.

10. The Electoral Registration Officer had a legal duty to at least look into the local verification report before making any reference to the Foreigners Tribunal for an opinion as to whether the petitioner is a person who entered the State of Assam subsequent to 25.03.1971. It appears that there is an absolute non-application of mind by the Electoral Registration Officer in referring the petitioner inasmuch as the local verification firstly states that she was born on 16.12.1969 at Nalbari which is a place in Assam, which itself is indicative enough that the petitioner could not have migrated inside Assam subsequent to 25.03.1971. Secondly, it is not understood why the Electoral Registration Officer as well the local verification officer deemed it appropriate that the information required in Clauses 8 to 14 are not required to be gone into in respect of the petitioner. The manner in which the

Electoral Registration Officer, 114 Jonai (ST), LAC had referred the petitioner to the Foreigners' Tribunal for an opinion as to whether she is a person who entered the State of the Assam subsequent to 25.03.1971 is deprecated. Because of such casual approach without any application of mind and also in the facts and circumstances narrated above, we are of the view that a legal injury had been caused to the petitioner by referring her to the Foreigners' Tribunal for an opinion as to whether she is a person who entered the State of Assam subsequent to 25.03.1971. For the purpose, the Electoral Registration Officer, 114 Jonai (ST), LAC to pay a cost of Rs.10,000/- (Rupees Ten Thousand) to the petitioner.

11. The other aspect is that the relief eligibility certificate issued by the Government of India in the Ministry of Rehabilitation dated 19.06.1965 had been exhibited before the Tribunal and we see no reason as to why the Tribunal did not apply its mind into the said certificate while rendering its opinion. The conduct of the Foreigners' Tribunal No. 2, Dhemaji is also unacceptable in law, where the Tribunal should keep it in mind that they are exercising a quasi-judicial jurisdiction and it is not to be exercised casually, in the manner as it had been done in the instant case.

12. The Home Department of the Government of Assam to bring it to the notice of the Member of the Foreigners' Tribunal No. 2, Dhemaji about the aforesaid observation and require the Tribunal to perform its duty in the manner as required under the law. As the reference against the petitioner is itself untenable in law as indicated above, the reference, the proceeding, as well as the opinion dated 28.01.2018 passed in FT Case No. 275/2017 are set aside and the petitioner is entitled to all such legal rights as she may be entitled under the law.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant