

GAHC010155402017



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

Case No. : WP(C)/8103/2017

SMT. RENUBALA DAS and 3 ORS.
W/O- LT RAKESH DAS

2: SRI RANU DAS
S/O- LT RAKESH DAS

3: SRI PANU DAS
S/O- LT RAKESH DAS

4: SMT RINA DAS
W/O- LT RANU DAS R/O-VILL ULLUKUCHI
P.S. JAGIROAD
DIST- MORIGAO

VERSUS

THE UNION OF INDIA and 3 ORS
REPRESENTED BY THE SECRETARY DEPTT. OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER and SECRETARY
DEPTT. OF HOME AFFAIRS GOVT. OF ASSAM
DISPUR
GHY-6

3:DEPUTY COMMISSIONER
MORIGAON

4:SUPERINTENDENT OF POLICEBORDER
MORIGAO

Advocate for the Petitioner : MR V K BAROOAH

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE MITALI THAKURIA

22/11/2023

(M.R. Pathak, J)

Heard Mr. K K Dey, learned counsel for the petitioners and Mr. P S Lahkar, learned Central Government Counsel for the respondent No. 1. Also heard Mr. G Sarma, learned Standing counsel, Home Department, Assam for the respondent Nos. 2 & 4 and Mr. P Sarma, learned Additional Senior Government Advocate, Assam for the respondent No. 3.

2. On being referred by the Superintendent of Police (Border), Morigaon under Reference IM(D)T Case No. 31/2002, dated 22.01.2002, Case No. F.T. (C) 573/2010 was registered against the petitioners before the learned Member, Foreigners' Tribunal No. 1, Morigaon, Assam, wherein the learned Tribunal on 01.07.2016 issued notice to the petitioners, fixing 13.10.2016 for their appearance and filing of their written statement(s).

3. On receipt of the notice of the said Case No. F.T. (C) 573/2010, though the petitioners appeared before the learned Tribunal on 13.10.2016, but by filing a petition, they prayed for time to file their written statement(s) as they could not collect their necessary documents. As such, on 13.10.2016, the Tribunal granted time to the petitioners for filing their written statement(s). On the prayer of the petitioners, the Tribunal from 28.11.2016 to 27.06.2017 granted time to the petitioners to file their written statement(s). On 27.06.2017, the Tribunal gave last chance to the petitioners to file their written statement(s) in the matter and fixed for the same on 20.07.2017. On 20.07.2017, the petitioners filed a petition before the Tribunal being Petition No. 782/2017 praying for some more time to file their written statement(s) in the matter stating that they failed to collect the necessary documents. The Tribunal rejected the said petition of the petitioners as it was without any basis considering the fact that since 13.10.2016, they took time to file their written statement(s) in the matter.

4. As per the provisions of the Foreigners (Tribunal) Order, 1964, a reference is required to be adjudicated within 60 (sixty) days from the receipt of the notice and since the petitioners from

13.10.2016 to 20.07.2017, though appeared in the matter, but did not file any written statement in spite of granting time, the learned Member, Foreigners' Tribunal No. 1, Morigaon, Assam by order dated 20.07.2017 disposed of the said Case No. F.T. (C) 573/2010 declaring the petitioners to be foreigners under the Foreigners Act, 1946 holding that they had illegally entered into the territory of India (Assam) on or after 25.03.1971 as they failed to prove their nationality.

5. Being aggrieved with the said order dated 20.07.2017, the petitioners have filed this writ petition on 18.12.2017.

6. The Court while issuing notice to the respondents by order dated 22.12.2017 observed that the petitioners shall not be deported from India pursuant to the impugned order dated 20.07.2017, noted above.

7. After hearing the learned counsels for the parties and considering the entire aspects of this matter, we set aside and quash the impugned order dated 20.07.2017 subject to the following conditions –

(a) that the petitioners jointly shall deposit an amount of Rs.5,000/- with the District Legal Services Authority, Morigaon as an exemplary cost on or before 08.12.2023, obtaining necessary receipt from the said authority in that regard.

(b) that after obtaining such receipt from the Secretary, District Level Services Authority, Morigaon towards payment of cost as directed by the Court, the petitioners shall file their written statement(s) before the Foreigners Tribunal No. 1, Morigaon in Case No. F.T. (C) 573/2010 on or before 12.12.2023 along with the original copy of the receipt of payment of such cost of Rs.5,000/- before the Secretary, District Level Services Authority, Morigaon. On the said date, i.e., on 12.12.2023, the petitioners shall also file their respective or joint evidence-in-affidavit(s) along with the relevant documents.

8. In the event of filing of such written statement(s) as well as the evidence-in-affidavit(s) along with the original copy of the receipt of payment of such cost of Rs.5,000/-, the Foreigners Tribunal No. 1, Morigaon shall accept such written statement(s) of the petitioners in said Case No. F.T. (C) 573/2010 as well as said evidence-in-affidavit(s) and shall dispose of the matter in accordance with law and as per the provisions of the Foreigners (Tribunal) Order, 1964.

9. Failure on the part of the petitioners to file their written statement(s) along with the original

copy of the receipt of payment of cost of Rs.5,000/- obtained from the Secretary, District Level Services Authority, Morigaon as well as their evidence-in-affidavit(s) by 12.12.2023 before the Foreigners Tribunal No. 1, Morigaon in Case No. F.T. (C) 573/2010 then the said Foreigners Tribunal shall be at liberty to dispose of the said Case No. F.T. (C) 573/2010 without their such written statement(s) following the due process of law as decided earlier on 20.07.2017.

10. With the above observation and direction, this writ petition stands disposed of granting a chance to the petitioners to prove their Indian nationality, as prayed for.

JUDGE

JUDGE

Comparing Assistant