

GAHC010175352020



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

Case No. : WP(C)/5277/2020

ARCHANA DAS
W/O SRI BHASA CH. DAS,
D/O ANIL CHANDRA DAS
RESIDENT OF VILLAGE NORTH SALMARA, PART I, PO NORTH SALMARA,
PS ABHAYAPURI, DIST BONGAIGAON, ASSAM, 783383

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE MINISTRY OF HOME DEPARTMENT, NEW DELHI
110001

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM HOME DEPARTMENT
DISPUR GUWAHATI 781006

3:THE SUPERINTENDENT OF POLICE(B)
BONGAIGAON
ASSAM 783384

4:THE ELECTION COMMISSION OF INDIA
NEW DELHI 11000

5:THE STATE CO ORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGARH. GUWAHATI 78103

Advocate for the Petitioner : MR S K SARKAR

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

09.06.2023

(AM Bujor Barua, J)

Heard Mr. SK Sarkar, learned counsel for the petitioner. Also heard Ms. L Devi, learned CGC for the respondents in the Union of India as well as for the authorities under the NRC, Mr. AI Ali, learned counsel for the authorities under the Election Commission of India, Ms. A Verma, learned Special Standing Counsel, Foreigners Tribunal for the Home Department, Government of Assam as well as the Superintendent of Police (B) Bongaigaon and Ms. K Phukan, learned Government Advocate for the Deputy Commissioner, Bongaigaon.

2. The petitioner Archana Das was referred to the Foreigners Tribunal Bongaigaon No.2 Abhyapuri for rendering an opinion as to whether she is a person who had entered the State of Assam on or after 25.03.1971 resulting in the registration of BNGN/FT-2/APR/Case No.139/17 corresponding to Ref BNGN IMDT No.327/2002 wherein an opinion dated 27.11.2019 was rendered declaring the petitioner to be a foreigner who had entered the State of Assam from the specified territory on or after 25.03.1971.

3. Being aggrieved this writ petition is instituted.

4. The writ petitioner has raised a grievance that although she initially appeared before the Tribunal and submitted certain documents, but the same could not be examined in a proper manner and before the petitioner could avail such opportunity, the impugned order was passed declaring her to be a foreigner.

5. We have perused the order dated 27.11.2019 of the Tribunal as well as the order sheets annexed to the writ petition. A reading of the order sheets make it discernible that on several occasions, the petitioner remained absent and sought for adjournments without any acceptable reason and it is only under such circumstances that the Tribunal was compelled to pass the order impugned declaring the petitioner to be a foreigner based upon the materials that were already available before it.

6. From such point of view, we do not find any infirmity in the order dated 27.11.2019 passed in BNGN/FT-2/APR/Case No.139/17 corresponding to Ref BNGN IMDT No.327/2002. But, however, as the petitioner makes a claim that she be provided another opportunity to appear before the Tribunal and produce appropriate and relevant materials, we allow another opportunity to the petitioner.

7. Accordingly, for the interest of justice, we interfere with the order dated 27.11.2019 passed in BNGN/FT-2/APR/CaseNo.139/17 corresponding to Ref BNGN IMDT No.327/2002 and remand the matter back to the Foreigners Tribunal Bongaigaon No.2 Abhyapuri for an adjudication on its own merit.

8. The petitioner to appear before the Tribunal on 14.07.2023.
9. But for the conduct of the petitioner in not doing the needful in her earlier appearances before the Tribunal, the petitioner to pay a cost of Rs.5000/- to be paid before the District Legal Services Authority Bongaigaon. Upon showing the proof of the payment of the cost, the petitioner would be allowed to appear before the Tribunal on 14.07.2023.
10. Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant