

GAHC010187132023



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

Case No. : WP(C)/4985/2023

ANNA KHATUN
W/O- HABEZ ALI ,D/O- ASHAN ALI @ ASHAN ALI MANDAL, R/O-
RAKHYASINI, P.O. RAKHYASINI, P.S. MORNOI, DIST. GOALPARA, ASSAM,
PIN- 783101.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI-1.

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE STATE COORDINATOR OF NRC
BHANGAGARH
ASSAM
GUWAHATI-05.

5:THE DEPUTY COMMISSIONER
GOALPARA
ASSAM
PIN- 785621.

6:THE SUPERINTENDENT OF POLICE (B)

GOALPARA
ASSAM
PIN- 783101.

7:THE OFFICER-IN-CHARGE
MORNOI POLICE STATION
DIST. GOALPARA
ASSAM
PIN- 783101

Advocate for the Petitioner : MR. M U MAHMUD

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

BEFORE
HONOURABLE MR. JUSTICE LANUSUNGKUM JAMIR
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 30.08.2023

(L.S.Jamir, J)

Heard Mr. M.U.Mahmud, learned counsel for the petitioner. Also heard Ms. L.Devi, learned CGC for the respondent Nos. 1 and 4; Mr. A.I.Ali, learned standing counsel, ECI for the respondent No. 2; Mr. J.Payeng, learned standing counsel, FT for the respondent Nos. 3, 6 and 7 and Mr. P.Sharma, learned Addl. Senior Govt. Advocate for the respondent No.5.

2. The petitioner before this Court is aggrieved with the ex-parte order dated 04.08.2017, passed by the Foreigners Tribunal No.8 at Goalpara in Case No. F.T(8th)-GLP/399/16, by which the petitioner has been declared as a foreigner as she entered Assam on or after 25.03.1971.

3. The ground for passing ex-parte order by the learned Foreigners Tribunal

No.8 at Goalpara is that the Process Server reported through the Officer-In-Charge of Goalpara R.P.S that the proceedee/petitioner is not available in village Kaladanga. Thereafter, notice was again issued to the proceedee and the Process Server was directed to hang the notice in a conspicuous part being a shop. After execution, the original copy of the notice was returned to the Tribunal with 2(two) witnesses, namely, Abdul Baten and Azibar Rahman which was countersigned by the Officer-In-Charge of Goalpara R.P.S. The Foreigners Tribunal further held that the proceedee was absent on four different dates. Under such circumstances, the learned Tribunal proceeded ex-parte against the petitioner and declared the petitioner a foreigner.

4. In the case of *State of Assam and Ors. Vs. Moslem Mondal and Ors. reported in 2013 (1) GLT 809*, a full bench of this Court laid down the procedure with regard to the service of notice by the Tribunals on the proceedee. The relevant paragraph is extracted herein below:

“(103) Having regard to the aforesaid discussion, we are of the view that, in the absence of any uniform laid down procedure, the following procedure is henceforth required to be adopted, in the matter of service of notice by the Tribunals on the proceedee. The procedure laid down herein below shall be applicable to all the proceedings pending before the Tribunal where the notices are either yet to be issued or issued but not yet served:

i. The proceedee shall be served with the notice, together with the main grounds on which he is suspected to be a foreigner, as far as practicable, personally, whose signature/thumb impression, as proof of service, is to be

obtained.

ii. Such notice shall be issued in the address where the proceedee last resided or reportedly resides or works for gain. In case of change of place of residence, which has been duly intimated in writing to the investigating agency by the proceedee, the Tribunal shall issue notice in such changed address.

iii. The notice shall be issued by the Tribunal in the official language of the State also indicating that the burden is on the proceedee to prove that he is an Indian citizen and not a foreigner.

iv. The service of notice on any adult member of the family of the proceedee, in case he is found to be not present at the time of service, shall constitute the service on the proceedee. In token of such service the name and signature/thumb impression of such adult member shall be obtained. In case such adult member refuses to put the signature or thumb impression, a report in that regard shall be submitted.

v. If the proceedee or any available adult member of his family refuses to accept the notice, the process server has to give a report in that regard along with the name and address of a person of the locality, who was present at the time of making such an effort to get the notices served, provided such person is available and willing to be a witness to such service. The signature/thumb impression of such witness, if present and willing, must be obtained.

vi. In case the proceedee has changed the place of residence or place of work, without intimation to the investigating agency, a report in that regard shall be submitted by the process server. A copy of the notice shall then be affixed in a conspicuous place where the proceedee last resided or reportedly resided or worked for gain, containing the name and address of a respectable person of the locality, if available and willing to be a witness for that purpose. The signature/thumb impression of such person, in that case, shall also be obtained in the said report.

vii. Where the proceedee or any adult member of his family are not found in

the residence, a copy of the notice shall be pasted in a conspicuous place of his residence, witnessed by 1(one) respectable person of the locality, subject to his availability and willingness to be a witness in that regard. In that case the signature or thumb impression of that person shall also be obtained in proof of the manner in which such service is effected.

viii. Where the proceedee resides outside the jurisdiction of the Tribunal, the notice has to be sent for service to the officer-in-charge of the police station within whose jurisdiction the proceedee resides or last resided or last known to have been resided or works for gain. The process server shall then cause the service of notice in the manner as provided herein above.

ix. In case no person is available or willing to be the witness of service of notice, as mentioned above, or refused to put his signature or thumb impression, a signed certificate/verification is to be filed by the process server to that effect, which shall be sufficient proof of such non-availability, unwillingness and refusal. Questions (f): whether an application filed by a foreigner under sub-section (3) of Section 6A of the 1955 Act read with Rule 19 of the 2009 Rules, can be entertained beyond the time limit prescribed by Rule 19 of the said Rules for registration? If so, the ground(s) on which such delayed application can be entertained? AND Questions (g): Whether a person, who has been detected to be a foreigner within the meaning of sub-section (3) of Section 6A of the 1955 Act, is liable to be deported from India if he does not register his name as required under the provisions of 1955 Act and 2009 Rules?"

5. On a consideration of the manner in which the Tribunal proceeded with regard to the service of notice on the proceedee, we are of the considered opinion that the process for service of notice upon the proceedee was not duly followed. Accordingly, the impugned ex-parte order dated 04.08.2017, passed by the Foreigners Tribunal No.8 at Goalpara in Case No. F.T(8th)-GLP/399/16 is set

aside and quashed.

The petitioner is directed to appear before the Foreigners Tribunal No.8 at Goalpara on 29th of September, 2023.

6. With the aforesaid directions, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant