

GAHC010190142018



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

Case No. : WP(C)/5942/2018

MAZEDA BEGUM

W/O- HAKIM @ HAKIM ALI, D/O- LATE KHURSED ALI @ KHURSED MIYA
@ KHORSED ALI @ KHORSED ALI, R/O- VILL- CHANGDI, P.S-
SARTHEBARI, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, SHASTRI BHAWAN, TILOK MARG, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GHY- 6

3:THE DEPUTY COMMISSIONER
BARPETA
DIST- BARPETA
ASSAM

4:THE SUPERINTENDENT OF POLICE(B)
BARPETA
DIST- BARPETA
ASSAM
PIN-

5:THE ELECTION COMMISSIONER OF INDIA
NEW DELHI- 01

6:THE NRC COORDINATOR

NRC
ASSAM
BHANGAGARH
GHY- 0

Advocate for the Petitioner : MR. S H SIKDAR

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

05.01.2023

[N. Kotiswar Singh, J.]

Heard Mr. S.H. Sikdar, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Deputy Solicitor General of India, for respondent No.1 as well as appearing as standing counsel, NRC, for respondent No.6; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2 and 4; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent No.5 and Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for respondent No.3.

2. In this petition, the petitioner has challenged the opinion dated 06.07.2018 passed by the learned Member, Foreigners' Tribunal-III, Barpeta, Assam, in F.T. Case No.763(III) of 2013 [Ref. IMDT Case No.5969/98] by which the petitioner has been declared to be a foreigner.

3. We have heard the learned counsel appearing for the parties and also have gone through the records. Perusal of the impugned order dated 06.07.2018 indicates serious irregularities, deficiencies on the part of the learned Tribunal in rendering the opinion and

accordingly, we are of the view that the opinion cannot be sustained in law. We have come to this view, for the following reasons:

- (i) Though the learned Tribunal stated that the proceedee in her written statement stated in paragraph 9 that brother's name A. Latif Miya appeared in the voters list of 1997, but in her evidence as DW-1 she has not stated a single line that A. Latif is her brother. However, we have noted that said Abdul Latif himself had appeared before the Tribunal and deposed as DW-2 claiming that he is the elder brother of the proceedee.
- (ii) We have gone through the evidence of DW-2 where he was also cross-examined, in which it has been clearly stated that he is the brother of the proceedee and the said fact has been reiterated. There is nothing to show that the evidence of DW-2 is unreliable as regards the claim that he is the brother of the proceedee. Therefore, we are of the view that the said finding of the learned Tribunal is perverse and contrary to the evidence on record.
- (iii) We also have noted that the certificate issued by the Gaonbura to the effect that the proceedee is the daughter of late Khursed Ali of village Bandali Reserve, PO-Jatradia, PS-Tarabari, District-Barpeta, Assam and that she was married to one Hakim Ali. The said Gaonburah duly appeared and proved the certificate issued by him. No question was ever asked to him, doubting the genuineness of the certificate issued by the said Gaonburah though he was duly cross-examined. We find no reason why the said evidence should have been ignored by the learned Tribunal by holding that the certificate was not proved.
- (iv) Further, we have noted in paragraph 10 of the opinion that the learned Tribunal has

held that there are vast contradictions in between the contents of the certificate and deposition of DW-3 and accordingly, held that the evidence of DW-3 is not corroboratory and reliable. From what we have read of the evidence of DW-3, we do not find any contradiction rather, he supports the claim of the proceedee. On this ground also, we find that the finding of the learned Tribunal is not in accordance with the evidence.

4. There are many other observations made by the Tribunal of which we do not wish to make any further comment, in as much as these observations are not in accordance with law nor in accordance with the evidence on record since we are remanding the matter for fresh consideration.

5. We also have noted that the learned Tribunal gave a finding in paragraph 14 of the opinion that the petitioner is an illegal migrant/foreigner and declared the proceedee as a foreigner under Section 2(a) of the Foreigners' Act, 1946, without specifying during which period he entered Assam.

6. We fail to understand how this finding of the Tribunal will be at all relevant for the purpose of dealing with such foreigners in the State of Assam. As provided under Section 6A of the Citizenship Act, 1955, law contemplates that there are three categories of persons, who may enter into Assam from the specified territory of Bangladesh (erstwhile East Pakistan) who will be dealt with differently.

7. As per Section 6A(2) of the Citizenship Act, 1955 all the persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the

General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

8. It is thus a very special provision to deal with such persons who may come from the specified territory and who are foreigners, but they shall be deemed to be citizens. Thus, foreigners also can be deemed to be citizens as provided under Section 6A(2) of the Citizenship Act, 1955.

9. Further, there is another category of foreigners who are dealt with under Section 6A(3), under which every person of Indian origin who – (a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and (b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and (c) has been detected to be a foreigner; such persons will be entitled to register himself with the competent authority and such persons after 10 years of such registration can apply for citizenship in India.

10. Thus, these persons who enter Assam within the aforesaid period of 01.01.1966 and 25.03.1971 even if are found to be foreigners by the Foreigners Tribunal, can still claim to be Indian citizens provided they register themselves with the competent authority.

11. Though there is no reference to such other categories of persons/foreigners who come after 25.03.1971, the obvious consequence is that since there is no such privilege or protection granted to such persons, they shall be treated under the normal law under the Foreigners Act, 1946 and they will be accordingly dealt with in terms of the Foreigners Act, 1946.

12. Therefore, from the above, it is necessary for the Foreigners Tribunal to give a specific finding as to which category of foreigners the proceedee belongs to, as such a finding will have a direct consequence on his or her citizenship. In the present case, there is no such finding but a mere general observation that the petitioner is a foreigner, which in our opinion does not meet the requirements of law for which the Foreigners Tribunals have been constituted.

13. Though we are prima facie satisfied that the petitioner appears to have produced all the relevant records/documents to show that she is an Indian citizen, the Tribunal does not appear to have properly appreciated these evidences on record, which indicates that the proceedee is an Indian. Accordingly, we direct the Tribunal to reconsider the case of the petitioner in accordance with law.

14. Under the circumstances, we are of the view that the order dated 06.07.2018 passed by the learned Member, Foreigners' Tribunal-III, Barpeta, Assam, in F.T. Case No.763(III) of 2013 [Ref. IMDT Case No.5969/98] cannot be sustained in law. Accordingly, the present petition is allowed by setting aside the opinion dated 06.07.2018 passed by the learned Member, Foreigners' Tribunal-III, Barpeta, Assam, in F.T. Case No.763(III) of 2013 [Ref. IMDT Case No.5969/98]. The matter is remanded to the Tribunal for fresh reconsideration to give a fresh opinion by taking into consideration the evidence on record.

15. The petitioner will accordingly appear before the learned Foreigners Tribunal within a period of 1(one) month from today and the learned Tribunal will hear the petitioner again and thereafter the learned Tribunal shall pass a fresh opinion in accordance with law as regards the citizenship of the petitioner. The petitioner shall not be subjected to any coercive action by

the State during the pendency of the proceedings.

Sd/- Arun Dev Choudhury
JUDGE

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant