

GAHC010235102017



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

Case No. : WP(C)/2354/2017

MUSSTT. ZILIKA KHATUN @ JELEKA KHATUN
D/O- HUSSAIN AI, W/O- AZIMUDDIN, VILL- DHUPGURI, P.O- FATASHIMLU,
P.S- DHEKIAJULI, DIST- SONITPUR, ASSAM

VERSUS

THE UNION OF INDIA and 4 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI-1

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

3:THE DEPUTY COMMISSIONER
SONITPUR
DISTRICT- SONITPUR
ASSAM

4:THE SUPERINTENDENT OF POLICE
SONITPUR
DIST- SONITPUR
ASSAM

5:THE OFFICER-IN-CHARGE
DHEKIAJULI POLICE STATION
DIST- SONITPUR
ASSA

Advocate for the Petitioner : MR.S ISLAM

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

20.03.2023

[Achintya Malla Bujor Barua, J.]

Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Ms. P. Swargiary, learned CGC, appearing for respondent No.1; Mr. G. Sarma, learned special counsel, FT, appearing for respondent Nos.2, 4 and 5 and Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.3.

2. The petitioner Zilika Khatun, W/O Azimuddin had been referred to the Foreigners' Tribunal 3rd, Sonitpur, Tezpur, for rendering an opinion as to whether she is a person who entered the State of Assam from the specified territory on or after 25.03.1971, which resulted in registration of F.T. (Doubtful Citizen) Case No.70/2008 (Reference No.Tzp/B/07/16, dated 13.06.2007). The Tribunal rendered an opinion dated 03.08.2016 whereby the petitioner, namely, Zilika Khatun, W/O Abdul Aziz was declared to be an illegal migrant of the period from 01.01.1966 to 24.03.1971. Being aggrieved this writ petition is instituted.

3. We have perused the notices issued by the Foreigners Tribunal to the proceedee, one requiring the petitioner to appear before the Tribunal on 29.05.2008 and other dated 14.12.2010 requiring the petitioner to appear before the Tribunal on 21.01.2011. The two notices are issued in the name of Zilika Khatun, W/O Abdul Aziz, resident of Dhupguri, P.S.-Borsola of Sonitpur district. At the time of service of the notices, the petitioner clearly informed that she is Zilika Khatun, W/O Azimuddin and not Zilika Khatun, W/O Abdul Aziz. But be that as it may, it is stated that the authorities had forced upon the petitioner to accept the notice. Consequently, she appeared before the Tribunal and had adduced her evidence,

as advised.

4. The Tribunal in its opinion dated 03.08.2016 had also taken into consideration that the material on record produced and relied upon by the petitioner before the Tribunal pertains to Zilika Khatun, W/O Azimuddin, whereas the notice was issued in the name of Zilika Khatun, W/O Abdul Aziz and accordingly, rejected the evidence that the petitioner had rendered and by the opinion thereof it was observed that she is an illegal migrant of the period from 01.01.1966 to 24.03.1971.

5. It is fundamentally unacceptable that if the notice is in the name of one person but forcefully served to another person and when the other person comes to the Tribunal to adduce evidence as that person, the same would be rejected because the name differs with the name appearing in the notice.

6. Accordingly, the opinion dated 03.08.2016 passed by the Foreigners Tribunal 3rd, Sonitpur, Tezpur in F.T. (Doubtful Citizen) Case No.70/2008 (Reference No.Tzp/B/07/16, dated 13.06.2007) is set aside and consequently, the matter is remanded back to the Foreigners Tribunal 3rd, Sonitpur, Tezpur, to pass a reasoned order on the basis of materials available on record. The petitioner shall accordingly appear before the Tribunal on 27.04.2023. Till the reasoned order is passed, no coercive action shall be taken against the petitioner.

7. Send back the LCR immediately.

8. Writ petition stands disposed of in the above terms.

Sd/- Robin Phukan
JUDGE

Sd/- Achintya Malla Bujor Barua
JUDGE

Comparing Assistant