

GAHC010271582019



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

Case No. : WP(C)/8278/2019

KHOIMALA KHATUN @ KHOIMOLA KHATOON @ KHEMAL KHATUN
W/O. KURPAN ALI, D/O. MAMUD ALI SK @ TAHAJUDDIN, VILL. DAMBARI,
P.O. TULSIBARI, P.S. LAKHIPUR, DIST. GOALPARA, ASSAM, PIN-783132.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY OF THE MINISTRY OF HOME AFFAIRS, NEW
DELHI-01.

2:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-01.

3:THE STATE OF ASSAM

REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GUWAHATI-06.

4:THE DY. COMMISSIONER

GOALPARA
ASSAM
PIN-783101.

5:THE SUPDT. OF POLICE (B)

GOALPARA
ASSAM
PIN-783101.

6:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS
BHANGAGHAR
GUWAHATI-781005

Advocate for the Petitioner : MR. A F N U MOLLAH

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

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 30.05.2023
(AM Bujor Barua, J)

Heard Mr. AFNU Mollah, learned counsel for the petitioner. Also heard Ms. L Devi, learned counsel for the respondents no. 1 and 6 being the authorities under the Union of India and NRC respectively, Mr. T Pegu, learned counsel for the respondent no. 2 being the authorities under the Election Commission of India, Ms. A Verma, learned counsel for the respondents no. 3 and 5 being the authorities under the Home Department of Government of Assam and Ms. K Phukan, learned counsel for the respondent no. 4 being the Deputy Commissioner, Goalpara.

2. The petitioner Khoimola Khatoon had been referred to the Foreigner's Tribunal No. 6, Goalpara 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, resulting in registration of Case No. F.T.(6)-812/GLP/2018. The Tribunal rendered an ex-parte opinion dated 26.06.2018 declaring the petitioner

to be a foreigner.

3. Being aggrieved, this writ petition is instituted.

4. In paragraph 3 of the order of the Tribunal it is recorded as extracted:

“3. Accordingly notice was issued on 06/02/2018 to the proceedee and the process server went to the place of residence mentioned in the reference case, as per process server’s report, he went to the place where the proceedee last resided and made an interrogation about the proceedee and he was informed by the local people that there is no lady named Khoimola Khatoon is residing at the above mentioned Village i.e. the address mentioned in the notice, hence the process server returned the notice to the Tribunal, and on 28/05/2018 this Tribunal again issued notice to the Opp. Party. On 14/06/2018 this Tribunal again issued notice to the Opp. Party with a direction to the process server that if the Opp. Party is not found in the Village then affixed the notice in a conspicuous place in present of the witnesses, i.e. order to serve the notice under order 3{5(f)} of the Foreigners Order 3{5(f)} of the Foreigners Order 1964.”

4. A reading of the afore-extracted paragraph 3 of the opinion of the Tribunal makes it discernable that notice was issued on 06.02.2018 to the writ petitioner and the process server went to the place of the residence mentioned in the reference case. He also went to the place where the proceedee last resided and made an enquiry about the proceedee but he was informed by the local people that there was no such person named Khoimola Khatoon in the said village i.e. the village named in the notice. Accordingly, the process server had to return back. On 28.05.2018, the Tribunal again issued notice to the petitioner but without success. On 14.06.2018, a further notice was issued with a direction to the process server that if the petitioner is not found in the village, notice may be affixed in a conspicuous place in presence of the witnesses under the provisions of the Order 3(5)(f) of the Foreigners Order, 1964.

5. In such process, by following the aforesaid procedure the matter

proceeded against the writ petitioner resulting in the ex-parte opinion.

6. Mr. AFNU Mollah, learned counsel for the petitioner contests that no notice was served on the petitioner. Consequently, we verify from the records as to whether the notice was served or not.

7. It is noticed that the notice of the Tribunal was issued to Khoimola Khatoon, W/O Kurpan Ali and D/O Mamud Ali of village Fashatari. The address of the petitioner to be village Fashatari was as per the report of the Enquiry Officer where at the stage of enquiry it was the petitioner herself who had provided the said address to the police but now the petitioner claims that she is not a resident of village Fashatari but is a resident of village Dambari and a claim is made that the notice was not served to the petitioner at village Dambari. It was for the petitioner to be honest with the system to divulge her correct address at the stage of enquiry so that if necessary notices can be sent to the proper address. But by giving an incorrect and misleading address at the stage of enquiry, so that the notice would be diverted to some other address, which may result in an inability of the Tribunal to serve the notice and thereafter, to take advantage of the same, would be an act of subservience and adopting a misleading approach on the part of the petitioner.

8. Mr. AFNU Mollah, learned counsel for the petitioner vehemently states that the process server never went to the village Dambari and therefore, the notice could not be served but the said stand of the petitioner in the writ petition also shows the attitude of the petitioner to mislead the Enquiry Officer regarding the address so that the proper notice cannot be served.

9. In view of the aforesaid conduct of the petitioner, a cost of Rs.10,000/- (Rupees Ten Thousand) to be made to the District Legal Services Authority,

Goalpara. Upon showing proof on payment of cost the petitioner to appear before the Tribunal on 01.07.2023 to present her case.

10. The ex-parte opinion/order and all other subsequent orders are set aside and the Tribunal to pass an order on merit upon appearance of the petitioner.

11. Till the reasoned order is passed, no coercive action be taken against the petitioner.

Writ petition stands disposed of in the above terms.

JUDGE

JUDGE

Comparing Assistant