

GAHC010304692019



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

Case No. : WP(C)/9220/2019

MOZIRON NESSA @ MOZIRON BIBI
D/O- LT. MONSER ALI SHEIKH, W/O- LT. SAHAD ALI, R/O- VILL.
KAZAIKATA PT.-VI, P.O. AND P.S. BILASIPARA, DIST.- DHUBRI, ASSAM,
PIN- 783348.

VERSUS

THE UNION OF INDIA AND 9 ORS.
REP. BY THE MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA, NEW DELHI-
01.

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

3:THE STATE OF ASSAM
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY.-06.

4:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

5:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GHY.-05.

6:THE DIRECTOR GENERAL OF POLICE
ASSAM

ULUBARI
GHY.-05.

7:THE SUPDT. OF POLICE
DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

8:THE DY. COMMISSIONER
DHUBRI
DIST. DHUBRI
ASSAM
PIN- 783301.

9:THE OFFICER-IN-CHARGE
BILASIPARA POLICE STATION
DIST. DHUBRI
ASSAM
PIN- 783348.

10:THE ELECTORAL REGISTRATION OFFICER

26 BILASIPARA WEST LAC
DIST. DHUBRI
ASSAM
PIN- 783349

Advocate for the Petitioner : MR. M U MONDAL

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

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 29-09-2023

(B. Habung, J)

Heard Mr. M.U. Mondal, learned counsel for the petitioner and Ms. L. Devi, learned Central Government Counsel as well as Standing counsel, NRC for the respondent Nos. 1 & 5. Also heard Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent Nos. 2 & 10; Mr. H.K. Hazarika, learned Government Advocate, Assam for the

respondent Nos. 3 & 8 and Mr. G. Sarma, learned Standing counsel, Home Department of the State for the respondent Nos. 4, 6, 7 & 9.

2. On being referred by the Superintendent of Police (Border), Dhubri, the FT Case No. 6th/DBB/42/18 was registered in the Foreigners Tribunal (Sixth), Dhubri, Bilasipara. As the petitioner did not appear, the ex-parte order dated 31.03.2018 was passed by the said tribunal declaring the petitioner to be a foreigner of post 1971, answering the reference in affirmative.

3. It is discernible from the impugned order dated 31.03.2018 that it was passed merely basing on the report submitted by the process server stating that the proceedee was not found at her place of residence and left without informing the Investigating Agency. The notice was accordingly deemed to be served as per Sec.3 (5) (f) of Foreigners (Tribunal) Order 1964. The said order further says that, as the petitioner failed to discharge the burden of proof as required under Sec.9 of the Foreigners Act 1946, she was declared to be foreigner of post 1971 stream.

4. The learned counsel for the petitioner submits that the notice dated 09.03.2018, was not served to the petitioner. However, duplicate copy of the said notice was stated to have hanged in the notice board of the local Angandwadi Centre at village-Kazaikata, Part-VI Bilasipara, Dhubri District and the original copy was returned to the Police Station for submitting it to the learned Tribunal. He further submitted that the petitioner has been residing at village Kazaikata, Part-VI permanently since 1998 after the death of her husband and as such the report submitted by the process server dated 18.03.2018, stating that the petitioner was not available at village Kazaikata Part-VI was a wrong report.

5. It is further submitted that vide office note dated 20.03.18 the matter was fixed on 26.03.18 for necessary order. And on 26.03.2018 while recording that the proceedee as absent, the learned Tribunal treated that the notice has been served on the proceedee as per provision of Sec.3 (5) (f) of Foreigners (Tribunal) Order, 1964 and fixed next date for ex-parte order. And by the impugned ex-parte order dated 31.03.2018, the petitioner has been declared as a foreigner.

6. The report of the process server, reveals that he went to the address mentioned in the

Notice and confirmed that the proceedee was not available in that village, so he could not serve the notice to her and nobody of the said village was ready to collect the notice on behalf of the proceedee, so he hanged the duplicate copy of the notice on the Anganwadi Centre and submitted the original in the Police Station for onward submission to the Tribunal.

7. As per Sec. (5)(a) of the Foreigners (Tribunal) Order, 1964 "***the notice shall be served at the address where the proceedee last resided or reportedly resides or works for gain, and in case of change of place or residence, which has been duly intimated in writing to the investigating agency by the alleged person, it shall be served at such changed address by the Foreigners Tribunal***".

8. Further, as per Sec.3 (5)(f) of the Foreigners (Tribunal) Order, 1964 "***if the proceedee has changed the place of residence or place of work, without intimation to the investigating agency, the process server shall affix a copy of the notice on the outer door or some other conspicuous part of the house in which the proceedee ordinarily resides or last resided or reportedly resided or personally worked for gain or carries on business, and shall return the original to the Foreigners Tribunal from which it was issued with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed***".

9. In the instant case, we found that none of the above prescribed procedures have been duly followed.

10. It may be stated here that the petitioner was declared to be foreigner ex-parte as because notice was construed to have been served. The order reflects that, as the proceedee was not found at her place of residence and left without informing the Investigating Agency, the notice was served as per provision of Sec. 3(5)(f) of Foreigners (Tribunal) Order 1964. However, the order did not specifically stated that the process server had so affixed the copy in the circumstances under which he did do; he also did not give the name and address of the person by whom the house was identified and in whose presence the copy was affixed as required under rule 3(5)(f) of Foreigners (Tribunal) Order 1964. Further, the proceedee is

stated to be residing at village Kazaikata, Part-VI permanently since 1998, and the said claim has not been controverted by the respondents in the present writ petition.

11. In view of the above procedural aberration of rule 3(5)(f) of the Foreigners (Tribunal) Order 1964, we are of the view that the manner in which the notice was deemed to be served was in violation of the provisions of Rule 3(5)(a) and 3(5)(f) of the Foreigners (Tribunal) Order 1964; and accordingly, the impugned order dated 31.03.2018 passed by the Foreigners Tribunal (Sixth), Dhubri, Bilasipara in FT Case No. 6th/DBB/42/18 is set aside.

12. The petitioner is directed to appear before the Tribunal on or before 18.10.2023 and shall file her written statement as well as evidences on affidavit within the date so specified. Upon such appearance of the petitioner, the tribunal shall proceed from that stage accordingly, and shall dispose of the reference in accordance with law and the Rules as applicable.

13. In terms of the above, the writ petition stands allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant