

GAHC010052032017



AS:12815-DB

2024:GAU-

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

Case No. : WP(C)/7245/2017

FULBANU NESSA @ PHULBANU
W/O. HUSSAIN ALI @ HUSSEN ALI, D/O. LT. ABDUL ALI @ A. ALI, VILL.
KASOMARI SONARIBASTI, P.S. DALGAON, DIST. DARRANG, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI-01.

2:THE STATE OF ASSAM
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

3:THE DY. COMMISSIONER

DARRANG
DIST. DARRANG
ASSAM.

4:THE SUPDT. OF POLICE B

DARRANG
DIST. DARRANG
ASSAM.

5:THE OFFICER IN CHARGE

DALGAON POLICE STATION

DIST. DARRANG
ASSAM

Advocate for the Petitioner : MR. M U MAHMUD, MR. P K DAS,MR. S HOQUE,MR. A DAS,MR. M ALI,MR. S ISLAM,MS. C KALITA

Advocate for the Respondent : , ASSTT.S.G.I.,GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 16.12.2024
(K.R. Surana, J)

Heard Mr. M.U. Mahmud, learned counsel for the petitioner. Also heard Mr. G. Sarma, learned standing counsel for the FT matters, respondent nos.2, 4 and 5; and Mr. H.K. Hazarika, learned Govt. Advocate for respondent nos.3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 30.10.2017, passed by the learned Member, Foreigner's Tribunal (5th), Darrang, Mangaldai in Case No. FT(V)788/2016, arising out of S.P. Enquiry No. 16404/98, by which the petitioner was declared as an illegal migrant.

3. On perusal of the records, it is seen from the order sheet that during the proceedings of Case No. FT(V)788/2016, the Govt. pleader was absent. After filing of the written statement, the Tribunal took up the role of examining the witnesses and accordingly, the examination-in-chief of the petitioner and her brother was recorded as DW-1 and DW-2 in the absence of Govt. pleader. However, as indicated above, there is no cross-examination on behalf of the State.

4. In its opinion, the learned Tribunal has discarded the exhibits, being (1) Voters list of 1966 (Ext.1); (2) Voters list of 1970 (Ext.2); (3) NRC in the name of the projected father of the petitioner of 1966 and 1970 (Ext.3 and 4); (4) EPIC of the petitioner (Ext.5); (5) voters list of 2011 (Ext.6); (6) EPIC of DW-2 (Ext.7); (7) Gaonburha certificate (Ext.8); (8) legacy data of 1966 of the petitioner's projected father (Ext.9 and 10).

5. In the absence of any cross-examination, the learned Tribunal discarded the said Ext. Nos.5 and 6 on the grounds of age discrepancy and that the name of the mother did not tally in the voters list of 1970 (Ext.2) and NRC Form (Ext.9) and it was held that the petitioner has failed to prove her burden. It is true that the burden of proving that the petitioner is a citizen of India is on the petitioner under section 9 of the Foreigners Act, 1946. However, the petitioner had examined herself as DW-1 and her projected brother was examined as DW-2, but they were not cross-examined by the State. No questions were put to the DW-1 and DW-2 with regard to the deficiencies and/or discrepancies found by the learned Tribunal regarding age of petitioner. Thus, it cannot be said that the petitioner has failed to discharge her burden.

6. In the present case, the Tribunal also did not exercise its power to question the petitioner if certain discrepancies were found. Under such circumstances, the Court is of the considered opinion that the impugned opinion is not sustainable on facts and in law.

7. Accordingly, the Court has no hesitation to set aside the opinion dated 30.10.2017, passed by the learned Member, Foreigner's Tribunal (5th), Darrang, Mangaldai in Case No. FT(V)788/2016.

8. Accordingly, the matter is remanded back to the said learned Tribunal for a fresh decision.
9. It would be open to the State respondents to take a call as to whether they want to participate in the proceedings or not.
10. The petitioner is directed to appear before the learned Member, Foreigner's Tribunal (5th), Darrang, Mangaldai and produce a certified copy of this order within a period of 30 (thirty) days from the date of this order without awaiting for any notice from the learned Tribunal. On appearance of the petitioner, the learned Tribunal shall pass a fresh opinion in accordance with law.
11. In the event the petitioner does not appear before the learned Tribunal within the 30 (thirty) days time allowed, it would be open to the learned Tribunal to treat the petitioner as absent on call and pass an *ex parte* opinion.
12. It is provided that the petitioner shall not be arrested and deported from the Country within 30 (thirty) days from the date of this order.
13. The records of the Tribunal be sent back.
14. This writ petition stands allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant