

GAHC010072282021



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

Case No. : WP(C)/2855/2021

MUSSTT MAMTAZ BEGUM
W/O HABIBUR RAHMAN
D/O ABDUL KUDDUS,
RESIDENT OF VILLAGE AKARABARI, PS DHING, DIST NAGAON, ASSAM
782123

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY. MINISTRY OF HOME AFFAIRS. GOVT.
OF INDIA, NEW DELHI 01

2:THE ELECTION COMMISSION OF INDIA

NEW DELHI 01

3:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM HOME DEPT. DISPUR
GHY 06

4:THE CO ORDINATOR OF NRC

BHANGAGARH
ASSAM GHY 05

5:THE DEPUTY COMMISSIONER

NAGAON
ASSAM 782002

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
ASSAM 782002

7:THE OFFICER IN CHARGE
DHING POLICE STATION
NAGAON
ASSAM 78200

Advocate for the Petitioner : MR. SK N MOHAMMAD, MR A IKBAL,MR. SK S N MOHAMMAD

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,SC, ECI,SC, NRC

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

21.10.2024

(K.R. Surana, J)

Heard Mr. SK S N Mohammad, learned counsel for the petitioner. Also heard Mr. K Gogoi, learned CGC appearing for respondent no.1; Mr. H Kuli, learned counsel appearing on behalf of Mr. A.I Ali, learned standing counsel, ECI for respondent no.2; and Mr. G. Sharma, learned standing counsel for Foreigners Tribunal matters, representing respondent nos. 3, 5, 6 and 7.

2. The respondent no.4 is unrepresented, however, as the Coordinator NRC is an authority under the Home Department of the State, the respondent no.4 is deemed to be duly represented.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Musstt. Mamtaz Begum has assailed the *ex parte* opinion dated 15.07.2015 passed by the learned Member, Foreigner's Tribunal, Nagaon 1st, Nagaon in FT Case No.5060/2012, thereby declaring the petitioner as a foreigner, who has entered into India on or after 25.03.1971 and not an Indian citizen.
4. The learned counsel for the petitioner has submitted that though the petitioner has received notice of the proceedings, but she could not engage any counsel due to acute financial distress nor could she appear before the learned Tribunal although sufficient time was granted for her appearance. By referring to the documents annexed to this writ petition as Annexure-C to Annexure-M, it is submitted that the petitioner has several documents to show that she is an Indian citizen and not a foreigner. Accordingly, it is submitted that if the petitioner is given one opportunity to appear before the learned Tribunal, she can prove the said documents and establish that she is not a foreigner.
5. The learned standing counsel for the Foreigners Tribunal matters has submitted that though the explanation for not appearing before the learned Tribunal is vague, but the prayer of the petitioner may be allowed at a condition that strict timeline be framed for a expeditious disposal of the matter, as reference was registered against the petitioner in the year 2012.
6. Under the circumstances as indicated above and taking note of the submissions made by the Govt. Advocate, the Court is inclined to allow this writ petition by granting one opportunity to the petitioner to appear before the learned Foreigner's Tribunal to prove her citizenship.

7. For the purpose of enabling the petitioner to appear before the learned Foreigner's Tribunal for a fresh examination of the reference, the Court is inclined to set aside the *ex parte* opinion dated 15.07.2015 passed by the learned Member, Foreigner's Tribunal, Nagaon 1st, Nagaon in FT Case No.5060/2012, subject to the following directions :

- a) The petitioner is directed to appear before the said learned Tribunal on or before 14.11.2024 by producing a certified copy of this order.
- b) On the date of appearance, the petitioner shall file her written statement and also submit all the documents on which she intends to rely upon to prove that she is not a foreigner.
- c) The Court is further inclined to impose the cost of Rs.10,000/- (Rupees Ten thousand only) on the petitioner, to be deposited before the District Legal Services Authority, Nagaon within 14.11.2024 and to produce a receipt of such deposit before the learned Foreigner's Tribunal on 14.11.2024.

8. Resultantly, the *ex parte* opinion dated 15.07.2015 passed by the learned member, Foreigner's Tribunal, Nagaon 1st, Nagaon in FT Case No.5060/2012, declaring the petitioner to be a foreigner is set aside.

9. It is further ordered that in the event the petitioner fails to appear before the learned Member, Foreigner's Tribunal, Nagaon 1st, Nagaon within the time allowed, this order shall lose its efficacy for non-compliance of the direction.

10. Since the citizenship of the petitioner has come under cloud, the petitioner will appear before the Superintendent of Police (Border), Nagaon and furnish a bail bond of Rs.5,000/- (Rupees Five thousand only) with one suitable and solvent surety of like amount to the satisfaction of the said authority, whereupon the petitioner will be allowed to remain on bail. The concerned Superintendent of Police (Border), Nagaon shall also take appropriate steps for capturing the finger prints and biometrics of the iris of both eyes of the petitioner and shall also record all the particulars of the place of residence and other particulars as may be required to secure the presence of the petitioner before the learned Tribunal.

11. With the aforesaid observation and direction, this writ petition stands allowed.

12. Let the records of FT Case No.5060/2012 be returned forthwith to the concerned Foreigners Tribunal.

JUDGE

JUDGE

Comparing Assistant