

GAHC010072692024



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

Case No. : WP(C)/2064/2024

NASIMA KHATOON
WIFE OF MD. JAHAR ALI,
RESIDENT OF VILLAGE- BAIGORMARI,
POLICE STATION- DHULA,
DISTRICT- DARRANG, ASSAM,
PIN- 784115.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF HOME AFFAIRS,
NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT
OF ASSAM
HOME AND POLITICAL (B) DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE STATE CO-ORDINATOR OF NATIONAL REGISTRATION (NRC)
ASSAM
BHANGAGARH
GUWAHATI- 781005.

5:THE DEPUTY COMMISSIONER
DARRANG DISTRICT
ASSAM
PIN- 784148.

6:THE SUPERINTENDENT OF POLICE (B)
DARRANG DISTRICT
ASSAM
PIN- 784148

Advocate for the Petitioner : MR. D SARMAH, S. J. SAHARIAH,MR M M ZAMAN

Advocate for the Respondent : DY.S.G.I., SC, ECI,SC, F.T,GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

O R D E R

23.09.2024

(Soumitra Saikia, J)

Heard Mr. D. Sarmah, learned counsel appearing for the petitioner and Ms. K. Phukan, learned C.G.C appearing for the respondent No.1, Union of India. Also heard Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent No.2, Ms. A. Verma, learned Standing Counsel, Home Department, Assam for the respondent Nos.3 and 6 as well as Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No.5.

2. The petitioner is before this Court challenging the impugned ex-parte order dated 13.09.2019 passed in F.T.4th Case No.589/DHL/2015, by the learned Member, Foreigners' Tribunal 4th, Darrang, Mangaldai. By the said order, passed by the Foreigners' Tribunal, the petitioner was declared to be a foreigner who had illegally entered Assam after 25.03.1971 stream under Section 6A of the Citizenship Act, 1955.

3. The learned counsel for the petitioner submits that the impugned order was passed ex-parte and no opportunity of hearing or filing written

statement and adducing evidence was granted to the writ petitioner before the ex-parte order was passed. It is submitted that the notice of the proceedings was not served on the petitioner and the petitioner was unaware that the proceeding had commenced and consequently she could not contest the proceeding and the same was proceeded ex-parte and the impugned order dated 13.09.2019 was passed by the Tribunal.

4. The records of the Tribunal were called for and subsequently by the order dated 11.09.2024, the petitioner was permitted to remain on bail in terms of the conditions mentioned in the order.

5. Pursuant to the orders of the Court, the Tribunal records were requisitioned and the same are before the Court. A careful perusal of the records reveals that the notice which was issued by the Tribunal was never served on the petitioner. Further, there is a note by the Process Server which indicates that the notice could not be served as the petitioner was not found available in the village. The concerned Gaon Bura of the said village also issued a note saying that the person concerned, namely the writ petitioner was not available in the village.

6. The manner in which the notices are to be served on the proceedees, are clearly indicated in the Foreigners (Tribunals) Order, 1964.

7. As per Order 5(f), 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.

8. A perusal of the records, more particularly, the report of the Process Server clearly reveals that although an attempt was made to serve the notice on the proceedee on two different dates i.e., 02.09.2004 and 28.05.2019, but on both the occasions, the copy could not be served on the proceedee.

9. As per the provisions of Order 5(f) of the Foreigners (Tribunals) Order, 1964, the procedure prescribed in which the notice is to be served in the event the proceedee has changed the place of work or residence without intimation to the investigating agency, appears to have not been followed by the Process Server. There is no report that in the absence of the petitioner, the notice was affixed in a conspicuous part of the house or the locality and in the presence of any witnesses. Such report is clearly not available/seen from the Tribunal records. On the contrary, there is a report of the Gaon Bura which supports the note of the Process Server that the petitioner is not available in the village.

10. The learned counsel for the respondents objected to the prayers made by the writ petitioner and submitted that the impugned ex-parte order was passed by the Tribunal on 13.09.2019 and the writ petition was filed on 08.04.2024. It is submitted that there is no explanation as to how and when the petitioner came to be informed about the ex-parte order. It is further submitted that the address reflected in the cause title of the writ

petition, the address reflected in the notice in respect of the writ petitioner as well as the address of the enquiry report appears to be one and the same.

11. The learned counsel for the respondents further submits that there is no averment in the writ petition that the petitioner does not reside in the said address or has shifted to some other place. Furthermore, there is no explanation as to why the writ petition was filed after as many as more than 04(four) years since the ex-parte order was passed by the Tribunal.

12. The rival submissions of the learned counsel for the parties have been given due consideration.

13. While it is correct that the petitioner has not explained as to why and how she came to be informed about the ex-parte order passed by the concerned Tribunal and as to why the writ petition has been filed after a delay of 03(three) years, the fact remains that the consequence of the orders passed by the Foreigners Tribunal carry a severe civil consequences namely a loss of citizenship of the writ petitioner. Citizenship being a very important right for every citizen, the proceedees before the Tribunals are required to be given ample and adequate opportunities to contest the references brought against them by the State with proper evidences in support of their contention that they are not illegal migrants.

14. Having noticed the manner in which the notices were sought to be served on the petitioner, what is further seen from the impugned order is the finding of the Tribunal that the deputed constable affixed the notice in presence of witness and consequently, the Tribunal considered the service of notice to be returned. Such finding returned by the Tribunal is not

supported by the materials that are seen from the records.

15. Under such circumstances, this Court is of the considered opinion that the petitioner is required to be given another opportunity to appear before the Tribunal and defend her case in support of her contention that she is an Indian citizen.

16. In view of the discussions above, the impugned order dated 13.09.2019 passed by the Foreigners Tribunal 4th, Darrang, Mangaldai in F.T.4th Case No.589/DHL/2015, is therefore, set aside and the matter is remanded back to the Tribunal to re-decide this issue by giving opportunities to the petitioner to file her written statements and adduce all evidence in support of her contention.

17. Since the petitioner has appeared this Court, no further notice is required to be issued by the Tribunal. The petitioner is directed to appear before the Tribunal on 23.10.2024 without fail. The order permitting the petitioner to remain on bail passed by this Court i.e., the order dated 11.09.2024 will continue till the disposal of the matter before the Tribunal.

18. On 23.10.2024, the petitioner will appear before the Tribunal as directed above and on that day itself, the petitioner will file the written statements and the evidence on affidavit along with a copy of this order. The Tribunal will thereafter permit the petitioner to adduce evidence and cross-examination of witnesses, if any. The Tribunal will thereafter complete the proceeding in terms of the provisions of the Foreigners (Tribunals) Order, 1964.

19. It is made clear that in the event, the petitioner fails to appear before the Tribunal on 23.10.2024, as directed above, and fails to file her written

statement along with the evidence, the order passed today setting aside the impugned order of ex-parte of the Tribunal dated 13.09.2019 will stand vacated without further reference of this Court along with the order of bail, the benefit of which the petitioner is availing at present.

20. The writ petition accordingly stands disposed of in terms of the above.

21. LCR be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant