

GAHC010080022020



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

Case No. : WP(C)/2356/2020

AJEDA KHATUN
W/O. NAZRUL HAQUE, D/O. AYUB ALI, VILL. LOWDONG, P.O. MOHANPUR,
P.S. UDALGURI, DIST. UDALGURI BTAD ASSAM.

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GUWAHATI-06.

3:THE STATE ELECTION COMMISSION

ASSAM
DISPUR
GUWAHATI-06.

4:THE STATE CO-ORDINATOR

NATIONAL REGISTRATION OF CITIZEN (NRC)
ASSAM
BHANGAGARH
GUWAHATI-05.

5:THE DY. COMMISSIONER

UDALGURI
DIST. UDALGURI
ASSAM.

6:THE SUPDT. OF POLICE (B)

UDALGURI
P.S. UDALGURI
DIST. UDALGURI
ASSAM

Advocate for the Petitioner : MR. R ALI
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

24.04.2024

(Susmita Phukan Khaund, J.)

Heard Mr. R Ali, learned counsel for the petitioner, Ms. A Verma, learned Standing Counsel, Home Department, Assam, for the respondent Nos. 2 and 6; Mr. A I Ali, learned Standing Counsel, Election Commission of India, for the respondent No. 3, and Mr. P Sharma, learned Additional Senior Government Advocate, Assam, for the respondent No. 5.

2. The petitioner, Ajeda Khatun has filed this petition under Article 226 of the Constitution of India, praying amongst others to set aside and quash the *ex-parte* opinion dated 31.10.2018 passed by the Foreigners Tribunal No. 2nd, Darrang, Mangaldai in FT Case No. 419/2010 whereby she was declared to be a foreigner of post 25.03.1971 stream and the order dated 29.10.2019, also passed by the said Tribunal dismissing the Misc Case No. 14/2019 that was filed by the petitioner under Order 3-A (2) of the Foreigners (Tribunals) Order, 1964 read with Section 151 of the Code of Civil Procedure praying for review of the order dated 31.10.2018 passed in said FT Case No. 419/2010.

3. It is submitted that the petitioner had a strong case, but without granting an opportunity to present her case, the learned Tribunal passed the impugned *ex-parte* order dated

29.10.2019, declaring her to be a foreign national of post 25.03.1971 stream.

4. The genesis of the case was that a reference was initiated by the Superintendent of Police (Border), Darrang, Mangaldai, under Order 2 (1) of the Foreigners (Tribunals) Order, 1964 (1964 Order, for short), against the petitioner, suspecting her to be a foreign national, who entered into Assam after 25.03.1971. The Local Verification Officer (LVO) in his report, mentioned that during investigation, the petitioner could not produce any document in support of her citizenship. On receipt of the case record on transfer, notice was issued to the petitioner. As per the report of the Process Servers, notice was properly served, but the petitioner failed to appear before the Tribunal, despite service of notice. It was held by the learned Tribunal that the petitioner had intentionally evaded appearance and the learned Tribunal proceeded *ex parte* against the petitioner on the basis of the report on the notice. It was also observed by the learned Tribunal that the LVO, as per the direction of the Electoral Registration Officer, conducted a spot verification relating to the nationality of the petitioner-

Ajeda Khatun,
Wife of Husmat,
Resident of Village - Lowdong,
Police Station - Udalguri.

5. During spot verification, the petitioner failed to submit any document in support of her nationality and the LVO's report was forwarded to the ERO, suspecting her to be a foreigner entering into Assam from the specified territory after 25.03.1971. Thereafter, the then competent authority, i.e., Superintendent of Police (Border) of erstwhile Darrang District, Mangaldai [now, Udalguri District] made a reference, numbered as Reference Case No. 5376/1998 to the Foreigners Tribunal, wherein the FT Case No. 419/2010 was, thus, registered.

6. The learned counsel has submitted on behalf of the petitioner that name of her father is Ayub Ali and mother's name is Jharful Nessa and she is an Indian citizen by birth, who was born on 23.03.1981 at Lowdong Village, Mouza-Borsilajhar, District-Udalguri. It is

submitted that the petitioner can establish the linkage with her parents who are Indian citizens and she has compelling evidence to prove that she is an Indian citizen by birth. It is submitted that the petitioner's grandparents, namely, Miraj Ali, Amena Khatun and Hascha Khatun, used to reside in the abovementioned village prior to 1965, till their death. Their names appeared in the Voters' List of 1965, under the No. 74 Udalguri Legislative Assembly Constituency wherein House No. was shown as-121. It is also submitted that even after the petitioner's marriage, she has been residing in her husband's locality since the time of her marriage, till today. Despite her nationality, a reference was made under the Illegal Migrant (Detrmination) Tribunals Act, 1983, being IM(D)T Case No. 1430/2000, against the petitioner. She received a notice from the IM(D)T, Darrang, Mangaldai and appeared before the Tribunal and submitted written statement and produced relevant documents. The learned Tribunal, then declared the petitioner to be a citizen of India and not a foreign national.

7. It is also submitted that another FT Reference being FT (2) Case No. 419/2000, was registered against one Ajeda Khatun, Wife of Hasmat of Village-Lowdong. As the name of the petitioner is identical with said Ajeda Khatun, Wife of Hasmat, the Police forcefully handed over a copy of the notice to the petitioner's husband, although her husband's name was not reflected in the notice. It is submitted that if an opportunity is accorded to the petitioner she will be able to prove before the learned Tribunal that she is an Indian citizen and not a foreign national and she has been wrongly identified serving the notice of the case that was issued to another person.

8. It is submitted that in the month of August, 2018, another copy of the notice was served upon the husband of the petitioner, despite the fact that the name of the petitioner's husband is not similar to the name of the said person Ajeda Khatun shown as her husband in the notice. The learned Tribunal fixed the case for necessary order on 28.08.2018 and the impugned *ex-parte* order was finally passed on 31.10.2018, declaring the petitioner as a foreigner. When the Police visited the petitioner's house in connection with this case and informed the petitioner about the order of the learned Tribunal, the petitioner discussed that

matter with her learned counsel, who advised her to file a review petition and contest the case. The petitioner, being an illiterate woman, followed the instructions of the learned counsel and filed a review petition, which was registered as Misc Review Case No. 14/2019. The petitioner also filed an application under Section 5 of the Limitation Act, for condonation of delay in filing the said review petition. The impugned order dated 29.10.2019, was passed by the learned Tribunal, dismissing her said review petition.

9. Per contra, it is submitted on behalf of the respondents that the record of the FT Case No. 419/2010, reveals that the notice was indeed served on Ajeda Khatun, wife of Hasmat, but the notice was received by Md Nazrul Haque, who is the husband of the present petitioner, Ajeda Khatun.

10. Ms. A Verma, learned Standing Counsel, Home Department, Assam on being enquired, fairly submitted that an opportunity can be accorded to the petitioner to present her case before the Tribunal, but she has to prove her linkage from the side of her parents and not from any other.

11. We have given our thoughtful consideration to the submissions at the Bar. We have also scrutinized the case record of FT 2nd Case No. 419/2010.

11.1. Vide order dated 20.05.2010 and in view of the Notification No. PLB/101/2005/116 dated 19.07.2005, and as per verdict of Hon'ble the Supreme Court in WP(C) No. 131 of 2000, *Sri Sarbananda Sonowal -Vs- Union of India*, reported in 2005 (5) SCC 665, this case was transferred to the Foreigners' Tribunal under the Foreigner Act, 1946 and Foreigners (Tribunals) Order of 1964.

11.2. The order of the learned Tribunal dated 27.10.2010, reflects that the petitioner appeared before the Tribunal and filed her appearance/attendance.

11.3. Thereafter, the petitioner remained absent without steps continuously from 27.08.2010 upto 11.05.2012.

11.4. Vide order dated 11.05.2012, the proceeding against the petitioner was filed based on a report of Niranjana Das and Chandra Singh Basumatary, both constables (B) of Udalguri Police Station.

12. After, more than five years, this case was again taken up. The order dated 05.09.2017, passed by the learned Member, Foreigners' Tribunal (2nd), Darrang, Mangaldai, is reproduced hereinbelow:-

“05/09/2017

Seen the letter No. UDL(B)/20/2017/3162-65 dated 06/05/2017, issued by the Superintendent of Police (B), Udalguri, referred to total 201 Nos. of order copy as per direction by Hon'ble Judge of Hon'ble High Court, Gauhati in the meeting held on 07/4/2017 at Administrative College, Khanapara. The case was already registered and also disposed of and order passed as filed on 11/05/2012.

Hence, as per direction, the case is taken up for disposal.

Issue notice against OP.

Fix 10/10/2017 for S/R.”

13. The case was taken up for disposal and notices were issued against the petitioner. The orders from 10.10.2017 upto 21.07.2018 reflects that notice issued against the petitioner was not returned after service.

13.1. The order dated 02.08.2018 reflects that the notice issued to the petitioner was returned by the Process Server and another date was fixed for service of notice.

13.2. This notice was re-issued and finally, this notice was served on 28.08.2018, but the petitioner remained absent without steps on 06.09.2018 and 13.09.2018.

13.3. On 13.09.2018, an order was passed that this case will proceed *ex parte* and date on 27.09.2018 was fixed for *ex parte* hearing and finally, order was passed on 31.10.2018.

14. A scrutiny of the record of the FT 2nd Case No. 419/2010, clearly reveals that the

proceeding can be divided into two parts. Initially, when the proceeding was initiated vide order dated 20.05.2010, this case against the petitioner was filed on 11.05.2012, but again on the basis of the Letter No. UDL(B)/20/2017/3162-65 dated 06.05.2017, issued by the Superintendent of Police (Border), Udalguri and as per direction of the High Court, 201 cases which were closed by different Tribunals, were again taken up for disposal. Thereafter, fresh notice was issued against the present petitioner and the final order dated 31.10.2018, impugned against the petitioner was passed by the Tribunal. There is no dispute that the petition under Order 3-A (2) of 1964 Order, read with Section 151 of the CPC was filed by the petitioner to review the *ex-parte* order dated 31.10.2018, wherein the present petitioner shown herself as Ajeda Khatun, wife of Nazrul Haque. The notices were issued to Ajeda Khatun, wife of Hasmat. The address given by the present petitioner is Ajeda Khatun, wife of Nazrul Haque, daughter of Ayub Ali of Village-Lowdong, Mouza-Barsilajhar, PO-Mohanpur, PS-Udalguri, District- Udalguri BTAD (Assam), whereas, on the contrary, the notices were issued to the petitioner as Ajeda Khatun, wife of Hasmat of Lowdong, Udalguri.

14.1. It is not fathomable from the record, if the petitioner was evading appearance in connection with the proceeding captioned above. The petitioner appearing now in this present case stated to be the wife of Nazrul Haque and this may be the reason why notices could not be served upon Ajeda Khatun, wife of Hasmat. There is substance in the argument submitted on behalf of the petitioner. The notices issued to the petitioner reflects that the petitioner is shown as wife of Hasmat, whereas the petitioner appearing in this case claims that her husband's name has been erroneously entered and this is the reason why she had not received notices issued against Ajeda Khatun, wife of Hasmat, as her husband's name is Nazrul Haque and not Hasmat.

15. Considering the submissions made at the Bar with circumspection, it is held that, it could not be ascertained that there was willful negligence on the part of the petitioner to appear before the Tribunal. The petitioner has given sufficient grounds assigning reasons for not appearing before the Tribunal.

16. From the aforesaid discussions, we are of the view that the petitioner is entitled for an opportunity to present her case before the Tribunal.

17. As such the impugned *ex-parte* opinion dated 31.10.2018 passed by learned Foreigners Tribunal No. 2nd, Darrang, Mangaldai in FT 2nd Case No. 419/2010 by which the petitioner was declared to be a foreigner of post 25.03.1971 stream and also the order dated 29.10.2019, passed by the same Tribunal in Misc Case No. 14/2019 dismissing the petition filed by the petitioner for review of said order dated 31.10.2018 passed in said FT 2nd Case No. 419/2010 are set aside and quashed.

18. The petitioner is directed to appear before the learned Foreigners Tribunal No. 2nd, Darrang, Mangaldai in FT 2nd Case No. 419/2010 on 27.05.2024 with a certified copy of this order. Further on the said date of her appearance she shall submit her written statement/reply as well as written evidence-in-affidavit in the said FT Case along with the documents on the basis of which she proposes to rely upon so as to prove her case and discharge her burden, as per Section 9 of the Foreigners Act, 1946, showing her linkage with her parents and grandparents.

19. The Foreigners Tribunal No. 2nd, Darrang Mangaldai need not send any fresh notice to the petitioner in said FT 2nd Case No. 419/2010 as this order has been passed in presence of her counsel.

20. No order as to cost(s).

21. In the event of appearance and filing of such written statement/reply as well as written evidence-in-affidavit in FT 2nd Case No. 419/2010 by the petitioner as per the direction above the Foreigners Tribunal No. 2nd, Darrang Mangaldai shall dispose of said FT 2nd Case No. 419/2010 as per the Foreigners Act, 1946 and Foreigners (Tribunals) Order, 1964.

22. It is also made clear that failure on the part of the petitioner to comply with the above direction, the concerned Foreigners Tribunal shall be at liberty to dispose of said FT 2nd

Case No. 419/2010 against her as per the provisions of said 1946 Act and 1964 Order.

23. Registry shall return the records of the FT 2nd Case No. 419/2010, to the learned Foreigners Tribunal No. 2nd, Darrang Mangaldai forthwith along with a copy of this order.

24. Mr. R Ali, learned counsel for the petitioner shall inform the petitioner about this order forthwith.

25. In terms of the above observations and directions, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant