

GAHC010081552024



AS:12816-DB

2024:GAU-

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

Case No. : WP(C)/2389/2024

SULTANA REZINA AHMED @ SULTANA REJIYA
W/O- HASMAT ALI,
VILLAGE- KASHIMPUR,
P.O- KENDUKUCHI,
P.S AND DIST- NALBARI, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, GOVT. OF
INDIA, NEW DELHI- 110001.

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE (B)
NALBARI
ASSAM
PIN-781337

4:THE DEPUTY COMMISSIONER
NALBARI
ASSAM

5:THE ELECTION COMMISSION OF INDIA
NEW DELHI-110001

6:THE STATE COORDINATOR

NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

7:THE FOREIGNERS TRIBUNAL-1
NALBARI
P.O AND DIST- NALBARI
ASSAM
PIN-78133

Advocate for the Petitioner : MR S C PANDIT, MD S ULLAH

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

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

ORDER

16.12.2024

(K.R. Surana, J)

Heard Mr. S. C. Pandit, learned counsel for the petitioner. Also heard Mr. G. Sharma, learned Standing Counsel, FT and Home Department, for the respondent Nos. 2 & 3; Mr. P. Sharma, learned Senior Government Advocate appearing for the respondent No. 4 and Mr. A. Ali, learned Standing Counsel for the respondent No. 5.

2. By filing this writing petition, the petitioner has assailed the *exparte* opinion dated 26.07.2019, passed by the learned Member, Foreigner's Tribunal-1st, Nalbari in FT (Nal.) N-1, Case No. 2458/06 in IMDT Case No. 634/2003, thereby declaring the petitioner to be a foreigner of post 25.03.1971 stream.

3. The learned counsel for the petitioner has referred to the statements contained in the writ petition as well as the affidavit filed in support of this writ

petition to project that the petitioner who is the wife of Hasmat Ali and the daughter of Rajab Ali Ahmed was the proceedee in the aforementioned reference case, her father's name was reflected as Kitab Ali. It is also projected that the petitioner is a resident of village Kashimpur, P.O- Kendukuchi under Nalbari Police Station in the district of Nalbari, Assam. However, as per the process service report supported by the certificate of Gaonburha of village Kashimpur, no such person existed in the village, and accordingly the notice was shown to be served in a substituted manner in the presence of the village Gaonburha, putting his signature as witness in the report of the process server stating that the proceedee has left the village.

4. The records received from the Tribunal also discloses that as per the process service report, the petitioner was not to be found at village Kashimpur as the notice was returned to the learned Foreigner's Tribunal.

5. As the petitioner has now appeared before this Court and asserts that she is the resident of village Kashimpur, her father's name is different than the name reflected in the requisition report of the enquiry officer as well as the reference. Under such circumstances, this Court is of the considered opinion that the petitioner may be given an opportunity of contesting the proceedings so as to establish her citizenship and to take an appropriate defence regarding the name of her projected father. Accordingly, the Court is inclined to set aside the *ex parte* opinion dated 26.07.2019, passed by the learned Member, Foreigner's Tribunal-1st, Nalbari in FT (Nal.) N-1, Case No. 2458/06 in IMDT Case No. 634/2003, on the conditions that the petitioner shall appear before the said Foreigner's Tribunal within a period of 1 month from the date of this order. It is also provided that in the event the petitioner does not appear before the said learned Tribunal, it would be open for the Tribunal to pass fresh opinion by declaring the petitioner to be absent on call. It would be necessary for the said learned Tribunal to issue a fresh notice to the petitioner for appearance in the Court.

6. Till the period of 30 days, from the date of this order, it is provided that the petitioner shall not be apprehended or deported out of the Country.

7. This writ petition stands allowed on the terms as indicated above.

8. Registry shall send back the records to the leaned Tribunal expeditiously.

JUDGE

JUDGE

Comparing Assistant