

GAHC010094842024



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

Case No. : WP(C)/3170/2024

DUDHJAN NESSA
D/O- LATE ANSER ALI @ ANSER MUNSHI,
W/O- ASROB ALI @ ARSOB ALI @ ASHRAB,
R/O- VILLAGE- PAHARSINGPARA,
P.O- DUBAPARA,
P.S- MORNOI,
DIST- GOALPARA, ASSAM, PIN-783101

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY 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)
GOALPARA

P.O AND DIST- GOALPARA
ASSAM
PIN-783101

4:THE DEPUTY COMMISSIONER
GOALPARA

P.O AND DIST- GOALPARA
ASSAM

PIN-783101

5:THE ELECTION COMMISSIONER OF INDIA

NEW DELHI-110001

6:THE ASSAM STATE COORDINATOR
OF NATIONAL REGISTER OF CITIZENS

BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M

Advocate for the Petitioner : MR. M H TALUKDAR

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

21.06.2024

(Suman Shyam, J)

Heard Mr. M. H. Talukdar, learned counsel for the petitioner. Also heard Mr. R. K. D. Choudhury, learned Dy.SGI appearing for the respondent No.1, Ms. A. Verma, learned Standing Counsel, Home Department, Govt. of Assam appearing for the respondent Nos.2 and 3, Mr. P. Sharma, learned Govt. Advocate, Assam appearing for the respondent No.4 and Ms. P. Baruah, learned Standing Counsel, ECI appearing for the respondent No.5.

2. By filing this writ petition the petitioner against whom Reference Case No.F.T(G-4)-M/226/2018 was registered before the Foreigners Tribunal No.4, Goalpara in the district of Goalpara, has approached this Court assailing the order dated 12.03.2024 passed by the learned Foreigners Tribunal rejecting the

prayer for adjournment made by the petitioner so as to adduce further evidence.

3. Mr. Talukdar, learned counsel for the petitioner submits that his client was serious about pursuing the matter of adducing further evidence but due to a mistake committed by the learned counsel, no steps could be taken for summoning the witness on 20.02.2024 which has resulted in the impugned order being passed by the learned Tribunal. By referring to the order dated 07.01.2022 passed by this Court in WP(C) No.61/2022 [*Sobura Khatun alias Shubura Khatun Vs. The Union of India and others*] Mr. Talukdar submits that in similar situation, this Court had interfered with the order passed by the learned Tribunal closing the evidence and remanded the matter by granting opportunity to the proceedee to adduce evidence. On such ground, a prayer has been made by the petitioner's counsel to set aside the impugned order and grant one more opportunity to the petitioner to adduce evidence.

4. Opposing the prayer made in the writ petition, Ms. A. Verma, learned Standing Counsel, Home Department, Govt. of Assam has forcefully argued that the petitioner has already availed number of adjournments on the same ground with the sole objective i.e. delaying proceedings. Taking note of such circumstances, the learned Tribunal has passed the impugned order dated 12.03.2024. As such, submits Ms. Verma, there is no good ground for this Court to interfere in the matter.

5. Similar is the submission of the learned Deputy Solicitor General of India as well as the learned Government Advocate, Assam appearing in this case.

6. We have considered the submissions made at the Bar and have also gone through the materials available on record.

7. It appears that the proceedings were registered against the writ petitioner way back in the year 2018 and at the stage of adducing further evidence, the proceeding have been adjourned for 15 times. It appears that the petitioner wanted to examine the G.P. Secretary as a witness but despite notices being issued, his attendance, could not be secured before the Tribunal. It further appears that recording of evidence in respect of other witnesses have already been concluded. It is in these circumstances the learned Tribunal has passed the impugned order dated 12.03.2024 by observing that the prayer for adjournment on the ground of adducing further evidence was nothing but a tactics to delay the proceedings.

8. Having gone through the materials on record and after taking note of the fact that as many as 15 adjournments have already been granted, which, according to the petitioner's counsel ought to be reckoned as six adjournments availed by the petitioner, we are of the view that sufficient opportunity was given to the petitioner to adduce further evidence as prayed for. Notwithstanding the same, the petitioner had failed to adduce such evidence. Under the circumstances the learned Tribunal was left with no option but to close the evidence and fix the matter for arguments. As such, we do not find any infirmity in the impugned order dated 12.03.2024.

9. In so far as the reliance placed by learned counsel for the petitioner in the order passed by the Division Bench in the case of Sobura Khatun alias Shubura Khatun (*supra*), after going through the order we find that the order was passed in the facts and circumstances of that case and therefore, it cannot be said that the aforesaid order lays down any principle of universal application. On the contrary, we are of the opinion that the facts and

circumstances of the case are substantially different and therefore, does not call for a similar approach in the present case.

10. In view of the discussion made herein above, this writ petition is held to be devoid of any merit and is accordingly dismissed.

11. We, however, make it clear that in the event an adverse order is passed by the learned Tribunal against the petitioner, it will be open for her to assail the same by taking all legally permissible ground including the ground urged in the present writ petition, if prejudice on such count is successfully demonstrated by the petitioner's counsel at the stage of hearing.

Writ Petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant