

GAHC010099462024



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

Case No. : WP(C)/2686/2024

MANGAL THIKADAR
SON OF LATE BHAGIRATH THIKADAR, RESIDENT OF VILLAGE- SHIVPUR,
JUGIJAN, HOJAI, ASSAM- 782429

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY, HOME AFFAIRS,
GOVERNMENT OF INDIA, NEW DELHI

2:THE STATE OF ASSAM
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
HOME (POLITICAL) DEPARTMENT
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF POLICE (B)
HOJAI
ASSAM

4:THE DEPUTY COMMISSIONER
HOJAI
ASSAM

5:THE SUPERINTENDENT OF POLICE (B)
KAMRUP (METRO)
ASSAM

6:THE DEPUTY COMMISSIONER
KAMRUP (METRO)
ASSAM

7:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC) BHANGAGARH
DIST.- KAMRUP (M)
ASSAM

8:THE ELECTION COMMISSION OF INDIA
NEW DELHI
PIN- 11000

Advocate for the Petitioner : MR R K MOUR, MR. R GUPTA

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

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

ORDER

Date : 30-09-2024
(Soumitra Saikia, J).

- 1.** Heard Mr. R.K. Gupta, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC for Union of India; Mr. J. Payeng, learned Standing Counsel, Foreigners' Tribunal for respondent Nos. 2, 3 & 5. Mr. H.K. Hazarika, learned Government Counsel for respondent nos. 4 & 6; Mr. H. Kuli on behalf of Mr. A.I. Ali for respondent No. 8. None represents for respondent No. 7.
- 2.** This writ petition is filed putting into challenge the order dated 28.03.2024 passed by the learned Member, Foreigners' Tribunal No. 1, Kamrup (M), Guwahati in F.T. Case No. 456 of 2014.
- 3.** By the said order the prayer of the petitioner to adduce evidence of his mother, one Smt. Karuna Thikadar was rejected. The Tribunal held that on an earlier date i.e. 15.12.2023 the opposite-party and two of his family members

were cross-examined and discharged and consequently the prayer of the petitioner to examine his mother was rejected. Further vide the said order, in view of a report received from the Sub Divisional Officer, Bashirhat (of the State of West Bengal) that no record regarding the Relief Eligibility Certificate is found in the name of Bhagirath Thikadar (projected father of the writ petitioner), the Tribunal declined to issue any further notice to the Sub Divisional Officer, Bashirhat.

4. Learned counsel for the petitioner submits that the petitioner as a proceedee submitted his list of witnesses on 28.08.2023 to the Tribunal in the proceedings which are initiated against the present petitioner. The list of witnesses contains the names of 5 witnesses including the petitioner. Witness No. 1 reflects the name of his mother, namely, Smt. Karuna Thikadar. It is submitted that in view of the list of witnesses that has been submitted on 28.08.2023, the finding of the Tribunal that all witnesses were examined and discharged and that the petitioner never mentioned that his mother shall be allowed to adduce evidence of the witnesses, is contrary to the records of the Tribunal and as such his petition seeking permission to adduce evidence to his mother ought not to have been rejected. The further submission of the counsel is that in view of contrary position as revealed from the records, the order dated 28.03.2024 rejecting the prayer of the petitioner to examine his mother may be interfered with and the petitioner be permitted to examine his mother as a witness before the Tribunal. The petitioner has also urged before this Court that the impugned order dated 28.03.2024 also reflects that cross-examination of the witnesses was completed and which is the reason why the prayer for examining the mother of the petitioner as witness was rejected. It is submitted

that as per the provision of the Evidence Act, 1872, it is only the adverse party who may cross-examine witnesses produced by the proceedee. In the present proceedings there was no cross-examination undertaken by the opposite-party/State. The Tribunal merely put questions to the witnesses. Under such circumstances, the conclusion of the Tribunal that the witnesses have been discharged pursuant to examination and cross-examination is belied by the records. It is also submitted that the Tribunal, in view of the report submitted by the Sub Divisional Officer, Bashirhat that there is no record regarding the relief eligibility certificate found in the name of Bhagirath Thikadar (projected father of the petitioner) declining to issue further notice to SDO, Basirhat is also required to be interfered with in view of the fact that the certificate has already been placed before the Tribunal as an exhibit and in support of the said exhibit evidence is required to be adduced by the Officer/ the Authority who is the custodian of the records relating to the said certificate. As such the prayer of the petitioner, to summon the competent authority as a witness from the concerned Department to adduce evidence in support of the said exhibit, namely the relief eligibility certificate issued to the name of Sri Bhagirath Thikadar, is required to be permitted and accordingly appropriate orders may be passed by this Court should in this regard.

5. Mr. J. Paying, learned counsel for the Home Department objected to the prayers made and submits that there is no infirmity in the order and the same does not call for any interference.

6. Learned counsel for the parties have been heard. By earlier order dated 03.06.2024 the Tribunal records have been called for and the same have been received. The pleadings and the Tribunal records are carefully perused. From

the records it is seen that a list of witnesses was filed before the Tribunal on 28.08.2023 showing the names of 5 witnesses including the petitioner to be examined on behalf of the writ petitioner before the Tribunal. Under such circumstances, the finding of the Tribunal that the petitioner never mentioned before the Tribunal that his mother should be allowed to adduce evidence as a witness appears to be contrary to the records. Once the list of witnesses is filed before the Tribunal it reflects the intention of the parties to call the witnesses named therein for examination in support of the case projected. In so far as the prayer for issuance of the notice to the authority who is the custodian of the records regarding the Relief Eligibility Certificate issued in the name of Bhagirath Thikadar, as well as the certificate for registration also issued in the name of Bhagirath Thikadar, it is seen from the records that the notices were issued in the name of the Sub Divisional Officer, Barakpur, West Bengal who is also shown to be the Certificate Officer, Citizen Registration Authority, Barakpur Division. The Foreigners (Tribunals) Order, 1964 clearly lays down the powers that may be exercised by the Foreigners Tribunal under Clause 4. Under the said Clause the Foreigners' Tribunal is vested with powers for summoning and enforcing the evidence of any person by examining him or her. The Tribunal also has a power for issuance of warrant of arrest if the person summoned fails to appear before the Tribunal. Under such circumstances when an application is made for summoning a witness in support of any evidence required to be adduced in support of any exhibit presented during the proceedings, the Tribunal is required to issue proper summons to the said witness. The order of the Tribunal declining to issue a summon in view of the certificate issued by the registering authority/the Sub Divisional Officer, Bashirhat that no records are available, will not, in the opinion of the Court satisfy the requirement of the powers vested in

Foreigners Tribunals under Clause-4 of the Foreigners (Tribunals) Order, 1964.

7. The submission of the counsel for the petitioner that no cross-examination was undertaken of the witnesses and therefore the question put to the witnesses by the Tribunal which are treated to be cross-examined by the Tribunal and the same being contrary to the provision of the Evidence Act, the said cross-examination made by the Foreigners' Tribunal be expunged, does not merit consideration.

8. We have carefully perused the Tribunal records and in the earlier orders the Tribunal has recorded that the examinations of the witnesses have been complete. The documents enclosed with the writ petition and available in the records also reflects that questions were put by the Tribunal to the petitioner on 15 December, 2024. In the earlier orders or in the questions put by the Tribunal there is no indication or reference of the Tribunal cross-examining any witness instead of the State. Such inference cannot be permitted to be drawn in the absence of any such material in the Tribunal Records. Under such circumstances, merely because the term 'cross-examination' finds place in the order dated 28.03.2024 we do not find any good ground to accept the submissions of the writ petitioner that the questions put by the Tribunal are to be treated as cross-examination by the Tribunal and therefore are required to be expunged. The prayer made by the petitioner to that extent is therefore rejected.

9. Having considered the rival submissions and upon due perusal of the Tribunal records, this Court directs that the matter be remanded back to the Tribunal for proceeding with the reference expeditiously as provided for under

the Foreigners Act, 1946 read with Foreigner (Tribunals) Order, 1946 read with Foreigners (Tribunal) for Assam.

10. The Tribunal may permit the proceedee to call for and examine any witness including his mother left to be examined in the list of witnesses presented before the Tribunal filed on 28.08.2023. In so far as the notice required to be issued to the authority who is the custodian of the relevant records relating to the relief eligibility certificate and registration certificate shown to have been issued in the name of Bhagirath Thikadar (projected father of the petitioner), the Tribunal will pass appropriate orders on such application as may be filed by the proceedee/ the writ petitioner.

11. We permit the petitioner to file necessary applications before the Tribunal accordingly. In so far as the prayer for expunging the cross-examination of the witnesses is concerned, the same is rejected since there was no cross-examination and only questions put by the Tribunal. As discussed above, mere use of the term 'cross-examination' in the impugned order dated 28.03.2024 cannot be accepted that for the purposes of the present proceedings questions put by the Tribunal are to be considered to be cross-examination of all or any of the witnesses. Such term perhaps was used by the Tribunal as a matter oversight. The State led by the Government Advocate may take steps to cross-examine any or all the witnesses if permitted under the procedure of law.

12. The impugned order dated 28.03.2024 therefore stands interfered with in terms of the discussions as above. The matter is remanded back to the Tribunal to proceed with the matter as expeditiously as possible as provided under Foreigners Act, 1946 read with Foreigner (Tribunals) Order, 1946, as directed

above.

13. Writ petition accordingly stands disposed of in terms of the above.

14. We direct the petitioner to appear before the Tribunal on 23.10.2024.

15. LCR to be sent back forthwith.

JUDGE

JUDGE

Comparing Assistant