

GAHC010129602024



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

Case No. : WP(C)/3777/2024

JAYA NANDI
D/O- BADAL CHANDRA DEY,
VILLAGE- GOTANAGAR GOSHALA HILL,
MALIGAON,
P.O- MALIGAON,
P.S- JALUKBARI, DIST- KAMRUP (M), ASSAM, PIN-781011

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SASTRI BHAWAN, 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 SPECIAL COUNCEL FOR NRC
GOVT. OF ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
NALBARI
ASSAM
PIN-781341

5:OFFICER IN CHARGE
POLICE STATION
NALBARI
ASSAM
PIN-781335

6:THE DEPUTY COMMISSIONER
DIST-NALBARI
ASSAM
PIN-781335

7:THE SUPERINTENDENT OF POLICE (B)
GUWAHATI
ASSAM
PIN-78100

Advocate for the Petitioner : MR. R C DAS, MR S C DAS,A JUBARIA,MR S HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

20.11.2024

(K.R. Surana, J)

Heard Mr. R. C. Das, learned counsel for the petitioner. Also heard Ms. L. Devi, learned CGC representing respondent no.1; Mr. J. Payeng, learned Standing Counsel representing respondent nos. 2, 4, 5 and 7; and Mr. R. Talukdar, learned Govt. Advocate representing respondent no.6.

2. The Special Counsel for the NRC, Govt. of Assam is arrayed as respondent no.3, who is neither proper nor a necessary party in this writ petition. Accordingly, the name of respondent no.3 is struck off without altering the seraitim of the respondents.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the *ex parte* opinion dated 12.12.2003, passed by the learned Member, Illegal Migrants (Determination) Tribunal, Nalbari in connection with IM(D)T (NAL) Case 5885/99 (arising out of Police Case No. 4124/98), by which the petitioner, namely, Smt. Jaya Nandi, has been declared to be an illegal migrant and accordingly, the reference was answered in favour of the State.

4. As the learned Standing Counsel for the FT matters has taken the plea of delay and laches on part of the petitioner to challenge the impugned opinion after 21 (twenty-one) years, the issue of delay and laches in approaching the Court is taken up first.

5. The learned counsel for the petitioner has referred to the statements made in this writ petition, as well as in the additional affidavit filed on 20.10.2024 and has submitted that the petitioner has all the documents to show that she is the daughter of one Badal Ch. Dey, her projected father, who was a Central Govt. Employee and had served the N.F Railway till his retirement on 30.06.2001. However, on receipt of the notice of the proceedings, the petitioner had appeared before the Illegal Migrants (Determination) Tribunal, Nalbari [IM(D)T for short] and filed her written statement. However, later on, she could not participate in the proceedings because of various reasons as has been stated in the writ petition.

6. It is submitted that the petitioner had filed her written statement on 30.01.2003, but as her husband, who was a professional auto rickshaw driver, met with an accident in the year 2003, the petitioner's family suffered financial hardship and could not take steps in the proceedings, which resulted in the

rendition of an *ex parte* opinion. In the writ petition, there is no other explanation for the delay apart from what is mentioned hereinbefore.

7. Thereafter, by filing an additional affidavit on 28.10.2024, the petitioner has projected few more reasons for delay in approaching the Court. In the said subsequent explanation of delay, the petitioner has referred to the solemnization of her marriage in the year 1988 and birth of her two daughters in the year 1989 and 1991, which is irrelevant for explaining the delay since the opinion was rendered in the year 2003. It is once again projected that the petitioner's husband met with an accident on 25.02.2003 and was hospitalized for treatment, but no motor accident claim was made in respect of the said accident. It is projected that somehow the petitioner managed to support her family over the years and she has also referred to her father's eye treatment from the year 2011-2015. According to the case projected by the petitioner, her father is a retired Railway servant, but no statement is made as to whether in respect of expenditures for the father of the petitioner, no medical reimbursement is made by the establishment from where he had superannuated.

8. In order to cover up the period from 2005-2016, it is only stated that the statement made in paragraph 6 is as follows :

"That with regards the petitioner who had engaged as a maid surrounding area of Maligaon as part-time basis w.e.f. 2005-2016 for livelihood along with two minor daughters as well as petitioner's disablement husband expenditure also maintained petitioner's whole family members."

9. If not understood from the said statement as to whether the petitioner was working as a maid or she had engaged a maid. Nonetheless, said explanation is not a good explanation to demonstrate the existence of genuine reasons for delay in challenging the impugned opinion. It is not her case that her employer had refused to give her temporary leave to attend the Tribunal or to meet her counsel to assail the opinion. It is further projected that from 20.07.2017 to 29.07.2017, her husband was in a hospital for about 8 (eight) days. The said explanation also does not disclose any reasons why from 2003-2017, the opinion of the Tribunal could not be challenged. Moreover, it has been projected that the husband of the petitioner had suffered an eye disorder for 2 (two) days from 24.09.2019 to 25.09.2019 and is projected that the petitioner is also suffering from high pressure for the last 8 (eight) years and thereafter, she went to the Tribunal and obtained the certified copy of the order and present writ petition is filed.

10. Therefore, from the discussions as made above, the Court is inclined to hold that the petitioner has not been able to satisfy the Court about existence of good and cogent reasons for not being able to challenge the impugned opinion of the Tribunal for the last 21 (twenty-one) years. The explanation given by the petitioner does not cover the entire period of 21 years and the intermittent misfortunes, as projected, are not sufficient for the Court to exercise certiorari jurisdiction under Article 226 of the Constitution of India to accept the challenge to the impugned opinion which was rendered after due service of notice on the petitioner. There is no reasonable explanation for not attending the Tribunal's proceedings after filing of written statement.

11. The petitioner, having failed to challenge the impugned opinion within a reasonable time, has allowed the impugned opinion to attain finality.

12. Accordingly, the delay, having not been properly explained, disentitles the petitioner for admitting this writ petition for hearing.

13. Accordingly, this writ petition stands dismissed at the motion stage without issuance of notice upon the respondents.

JUDGE

JUDGE

Comparing Assistant