

GAHC010133132024



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

Case No. : WP(C)/3457/2024

DURGA DAS
D/O- RAKHAL DAS,
VILL- GAROGHUTU,
P.S.- TAMULPUR,
DISTRICT- BAKSA,
ASSAM.

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF INDIA,
HOME DEPARTMENT, NEW DELHI- 11001,
INDIA.

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

HOME DEPARTMENT
DISPUR

GUWAHATI- 781006
ASSAM
INDIA.

3:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA
BHANGAGARH

GUWAHATI- 781005
ASSAM
INDIA.

4:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY COMMISSIONER

NIRVACHAN SADAN
ASHOKA ROAD

NEW DELHI- 110001
INDIA.

5:THE SUPERINTENDENT OF POLICE (BORDER)
DISTRICT- BAKSA
(ASSAM).

6:THE OFFICER-IN-CHARGE
TAMULPUR POLICE STATION
DISTRICT- BAKSA
ASSAM.

7:THE DEPUTY COMMISSIONER
BAKSA
ASSAM

Advocate for the Petitioner : MR. A K BHUYAN

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

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

ORDER

Date : 17-07-2024
(*Suman Shyam, J*)

Heard Ms. B. Bhuyan, learned Sr. counsel assisted by Mr. J. Das, learned counsel for the writ petitioner. Ms. K. Phukan, learned CGC appearing on behalf of Union of India, Mr. G. Sarma, learned standing counsel appearing for the Home & Political Department and FT, Mr. H.K. Hazarika, learned Govt. Advocate, Assam and Mr. A.I. Ali, learned standing

counsel, ECI are present on behalf of the respondents.

This writ petition is directed against the *ex-parte* order dated 09-01-2023 passed by the learned Member, FT, Baksa at Tamulpur in connection with FT Case No.

1722/BAKSA/2016 declaring the petitioner to be a foreigner of post 1971 stream on the ground that despite granting several opportunities to prove her nationality, the petitioner had remained absent without any steps. According to the petitioner, she is a layman and did not have knowledge and understanding about the implications of the proceeding initiated before the Foreigners Tribunal. *Bonafide* believing that her name would be included in the NRC under preparation, the petitioner had failed to engage a lawyer and instead, had approached the Gaon Burah, who had advised her not to take any action in the matter. It is under such circumstances, submits Ms. Bhuyan, the petitioner had failed to take steps in the connected FT case.

Contending that the petitioner has sufficient materials to establish her claim of nationality, the learned Sr. counsel has urged that one opportunity be granted to the petitioner to present her case before the Foreigners Tribunal by filing written statement.

The aforesaid submission of Ms. Bhuyan has not been seriously opposed by Mr. G. Sarma, learned standing counsel, Home & Political Department and FT as well as the other counsel representing the official respondents. If that be so and considering the facts and circumstances of the case, we are of the opinion that although no fault can be found with the learned Member, Foreigners Tribunal in passing the *ex-parte* order, yet, for ends of justice, the petitioner deserves one opportunity to present her case before the learned Tribunal on merit, more so, having regard to the consequences that may ensue to her due to the impugned *ex-parte* order.

We, accordingly, set aside the impugned order dated 09-01-2023. The petitioner is granted 60 days time with effect from today to appear before the learned Foreigners Tribunal along with her written statement and a copy of this order. If the petitioner submits her written statement, along with all necessary documents, within 60 days from

today as per leave granted by this Court, the same be taken on record and the matter be heard and decided in accordance with law.

We, however, make it clear that if the petitioner fails to comply with the order of this Court, then in that event, upon expiry of 60 days, the order of the learned Tribunal dated 09-01-2023 would automatically stand revived and necessary legal consequence thereof shall follow.

With the above observation, this writ petition stands disposed of.

JUDGE

JUDGE

GS

Comparing Assistant