

GAHC010133152024



2024:GAU-AS:11894-DB

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

Case No. : WP(C)/3784/2024

KAMANA DAS
D/O- LATE LAXMAN DAS,
W/O- SRI PRADIP DAS,
VILLAGE- 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-1, INDIA.

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

HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

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

GUWAHATI-5
ASSAM.

4:THE ELECTION COMMISSION OF INDIA

TO BE REPRESENTED BY COMMISSIONER

NIRVACHAN SADAN
ASHOKA ROAD

NEW DELHI -110001.

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, MS R DAS,MS M.CHAKRABORTY,MS. B BHUYAN,MS. N CHOUDHURY,MS B BORA,MR A TALUKDAR,MR A SHARMA,MR J DAS

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

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

ORDER

29.11.2024

[K.R. Surana, J.]

Heard Ms. B. Bhuyan, learned senior counsel assisted by Ms. B. Bora, learned counsel for the petitioner. Also heard Mr. P.K. Medhi, learned CGC appearing for the respondent no. 1; Mr. G. Sarma, learned Standing Counsel for the FT matters representing the respondent nos. 2, 3, 5 & 6; Mr. H. Kuli, learned counsel on behalf of Mr. A.I. Ali, learned Standing Counsel for the respondent no. 4; and Mr. P. Sarma, learned Additional Senior Government Advocate appearing for the respondent no. 7.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the *ex parte* opinion dated 09.01.2023, passed by the learned Member, Foreigners' Tribunal, Baksa & Tamulpur in F.T. Case no. 336/Baksa/2017, arising out of I.M.(D)T. Case no. 1188/2004, whereby the petitioner was declared to be a foreigner and an illegal migrant of post 1971 stream.

3. In the said *ex parte* opinion, the learned Tribunal has recorded that after due service of notice on the petitioner on 11.10.2021, the petitioner remained absent on 11.02.2022, 23.05.2022, 20.08.2022 and 11.11.2022 and therefore, as the petitioner did not contest the proceedings by filing written statement or evidence, the said *ex parte* opinion was passed.

4. In this writ petition, it is projected that the petitioner had approached the Gaonbura of the village, who had assured that her name would appear in the NRC, she did not contest the proceedings. The said ground is *ex facie* not acceptable as a good and sufficient ground for not appearing and contesting the proceedings despite receipt of notice.

5. The learned senior counsel for the petitioner has submitted that the petitioner has sufficient materials to establish that she is not a foreigner but a citizen of India and prays to give one opportunity to contest the reference.

6. Under the circumstances, we do not find any fault in passing the impugned *ex parte* opinion dated 09.01.2023 by the learned Member, Foreigners' Tribunal, Baksa & Tamulpur in F.T. Case no. 336/Baksa/2017 as the petitioner was consciously absent in the proceedings despite receipt of notice.

7. Be that as it may, as the issue of citizenship is a right, required to be established by the petitioner, we are of the considered opinion that one opportunity be granted, for ends of justice, to the petitioner to present her written statement and to contest the proceedings.

8. Accordingly, the impugned *ex parte* opinion dated 09.01.2023, passed by the learned Member, Foreigners' Tribunal, Baksa & Tamulpur in F.T. Case no. 336/Baksa/2017 is conditionally set aside on the following terms.

(i) The petitioner, namely, Smti. Kamana Das shall appear before the Superintendent of Police (Border), Baksa within 15 (fifteen) days from the date of this order and shall furnish a bail bond of Rs. 5,000/- (Rupees five thousand only) with one surety of the like amount to the satisfaction of the said authority.

(ii) It is made clear that as the said impugned opinion is conditionally set aside, on failure of the petitioner to take bail, this order would stand recall and the *ex parte* opinion dated 09.01.2023 would stand restored.

(iii) In addition, we provide that the petitioner shall deposit a cost of Rs. 1,000/- to the Member Secretary, District Legal Services Authority, Baksa and produce a copy of the acknowledgement along with a certified copy of this order before the learned Member, Foreigners' Tribunal, Baksa & Tamulpur within 25 (twenty-five) days from the date of this order and shall file written statement along with all necessary documents.

(iv) On compliance of the above conditions by the petitioner, the learned Member, Foreigners' Tribunal, Baksa & Tamulpur shall give an opportunity to the petitioner to prove her case and decide the matter afresh in accordance with law.

9. It is made clear that non-compliance of the above condition by the petitioner, consequences as indicated above shall follow.

10. The writ petition stands conditionally allowed to the extent indicated above.

JUDGE

JUDGE

Comparing Assistant