

GAHC010147292018



undefined

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

Case No. : WP(C)/4560/2018

HANUFA KHATUN
D/O- NUR HUSSAIN, W/O- RAFIQUUL ISLAM, VILL- KHANATUP, P.O- TALIYA
CHAPARI, P.S- RUPAHIHAT, DIST- NAGAON, ASSAM, PIN- 782125

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF HOME
AFFAIRS, NEW DELHI- 01

2:THE ELECTION COMMISSION OF INDIA
NEW DELHI- 01

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GHY- 6

4:THE ASSAM COORDINATOR
NRC
BHANGAGARH
ASSAM
GHY- 5

5:THE DEPUTY COMMISSIONER
NAGAON
DIST- NAGAON
ASSAM

6:THE SUPERINTENDENT OF POLICE(B)
NAGAON

DIST- NAGAON
ASSAM

7:THE OFFICER IN CHARGE
RUPAHIHAT POLICE STATION
DIST- NAGAON
ASSA

Advocate for the Petitioner : MR. M U MAHMUD, MR. M ALI,MR S ISLAM,MS. C KALITA,MS K GOGOI

Advocate for the Respondent : ASSTT.S.G.I., SC, F.T,SC, NRC,SC, ELECTION COMMISSION.

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

ORDER

19.11.2024

(K.R. Surana, J)

Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned CGC representing respondent no.1; Mr. H. Kuli, learned counsel on behalf of Mr. A. I. Ali, learned Standing Counsel representing respondent no.2; Mr. J. Payeng, learned Standing Counsel for the Home Department and FT matters representing respondent nos. 3, 6 and 7; and Mr. P. Sarmah, learned Additional Senior Govt. Advocate representing respondent no. 5. There is no representation from respondent no.4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, namely, Musstt. Hanufa Khatun, has assailed the legality of the opinion dated 29.05.2018, passed by the learned Member, Foreigners' Tribunal 3rd, Nagaon, in F.T Case No. NFT.(No.3) (D) 313/16 (corresponding to

D/Case No.31/98), declaring the petitioner as a foreigner, who has entered India illegally after 25.03.1971.

3. Heard the submissions of the learned counsel representing the appearing sides.

4. On the perusal of the records received from the Tribunal, we are surprised to note that in the order sheet of the learned Tribunal between 27.09.2016, when the proceedings was registered, till 29.05.2018, when the opinion was rendered, the presence of the Govt. Pleader/ Assistant Govt. Pleader (AGP) is not recorded.

5. The record further reveals that on 08.01.2018, the DW-1 was examined, cross-examined and discharged which is also reflected in the order sheet and on 15.05.2018, DW-2 was also examined, cross-examined and discharged, which is also noted in the order sheet. However, as the presence of the GP/AGP is not recorded, the only presumption that can be drawn by the Court is that the learned Tribunal had put questions to the DW-1 and DW-2, which is in a manner akin to the power of the Court as conferred under section 165 of the Evidence Act. However, such questions are recorded as cross-examination. A proceedings to be fair means affording reasonable opportunity of hearing to all the sides. It is another matter that if after granting reasonable opportunity, one side does not participate in the proceedings and the proceedings progress with the participation of the other side only. That situation is not apparent in the case in hand.

6. Moreover, from the order dated 15.05.2018 of the learned Tribunal, it is noted that on the said date, the DW-2, the official witness, who is the *Gaonburah* of Khanatup village had adduced evidence, he was examined, cross-examined and discharged. The evidence was closed and the next date was fixed on 29.05.2018 for orders. Therefore, we find that the learned Tribunal did not give any opportunity to the petitioner of being heard either in person or through his learned counsel.

7. As the record of cross-examination of DW-1 and DW-2 was in the absence of the GP/AGP, the record of cross-examination does not inspire the confidence of the Court about the manner in which the proceedings was taken up/conducted by the learned Foreigners' Tribunal. This is also not a case where the GP/AGP was present and declined cross-examination and therefore, to find out the truth, the learned Tribunal had put questions to the witnesses. Moreover, having noted that after the closure of evidence on 15.05.2018, the next date was fixed for rendering of opinion, which gives an impression that no opportunity of hearing was provided to both sides, the Court is of the considered opinion that the impugned opinion dated 29.05.2018, cannot stand the scrutiny of law and therefore, same is set aside as there was non-compliance of the principles of natural justice.

8. Accordingly, the matter is remanded back for fresh proceedings by the learned Foreigners' Tribunal 3rd, Nagaon from the stage of cross-examination of the witnesses.

9. The conditions for interference and setting aside of the impugned opinion 29.05.2018, passed by the learned Member, Foreigners' Tribunal 3rd,

Nagaon, in F.T Case No. NFT.(No.3) (D) 313/16 (corresponding to D/Case No.31/98) are as follows :

- a) In order to compel the appearance of the petitioner before the learned Tribunal, the Court is inclined to provide that within 04.12.2024, the petitioner shall appear before the Superintendent of Police (Border), Nagaon, and furnish a bail bond of Rs.5000/- (Rupees five thousand only) with one solvent surety of the like amount to the satisfaction of the said authority.
- b) On furnishing of the bail bond, the Superintendent of Police (Border), Nagaon shall obtain the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner and usual undertaking to appear before the Tribunal.
- c) The said authority shall also obtain necessary information and documentation as required under the Rules from the applicant for securing her presence.

10. Thereafter, the petitioner shall appear before the Foreigners' Tribunal, 3rd, Nagaon on or before 13.12.2024 and by producing a certified copy of this order, shall await for further directions from the said learned Tribunal.

11. Accordingly, on the conditions as aforesaid, the opinion dated 29.05.2018, passed by the learned Member, Foreigners' Tribunal 3rd, Nagaon, in F.T Case No. NFT.(No.3) (D) 313/16 (corresponding to D/Case No.31/98), is set aside and the said proceeding is remanded back for a fresh opinion by the learned Tribunal.

12. On appearance of the petitioner before the said Tribunal, an opportunity shall be granted to the petitioner to file her written statement along with documents as well as evidence-on-affidavit and produce her other witnesses in a time bound manner. Thereafter, a fresh opinion shall be passed by the said learned Tribunal in accordance with law.

13. In the meantime, the Registry shall send back the records of the Tribunal.

14. Before parting with the records, the manner in which the proceedings of F.T. Case No. NFT (No.3)(D) 313/2016, was conducted be brought to the notice of the State Home Department, represented by the Principal Secretary to the Govt. of Assam, Home Department. Accordingly, the learned Standing Counsel for Home Department and FT matters shall transmit a downloaded copy of this order to the said authority for information and for doing the needful.

15. It is also open to the State to take a call as to whether they are interested in arranging for Training Programmes for the learned Members of the Foreigners' Tribunal as well as GP/AGP attached to the said Tribunal, if deemed fit and proper.

16. It is made clear that, if the conditions imposed herein are not complied with and if the petitioner does not appear before the said learned Tribunal within the time allowed, this order would lapse and stand revoked by non-compliance and afflux of time and the impugned opinion shall become operative and would come in force.

17. Accordingly, this writ petition is allowed and disposed of at the motion stage without issuance of notice upon the respondents.

JUDGE

JUDGE

Comparing Assistant