

GAHC010153002018



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

Case No. : WP(C)/4857/2018

KALPANA DAS AND ANR.
W/O. SRI SARU BORO,
RESIDENT OF VILLAGE- ROIMARI, P.S. JAGIROAD, DIST. MORIGAON,
ASSAM, PIN- 782105.
D/O LT. JOI CAN DAS @ JOY CHANDRA DAS
ORIGINAL RESIDENTS OF VILL- BORKHAL
P.S. JAGIROAD, (NELLY O.P.)
DIST. MORIGAON, ASSAM, PIN - 782105.

2: SMTI. SUNTARA DAS
W/O SRI THANESWAR BORDOLOI
R/O VILL- BAKUA
P.S. SONAPUR
DIST. KAMRUP (METRO)
ASSAM
D/O LT. JOI CAN DAS @ JOY CHANDRA DAS
ORIGINAL RESIDENTS OF VILL- BORKHAL
P.S. JAGIROAD
(NELLY O.P.)
DIST. MORIGAON
ASSAM
PIN - 782105

VERSUS

THE UNION OF INDIA AND 7 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI-
110001

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF HOME
DISPUR

GUWAHATI-06.

3:LEARNED FOREIGNERS TRIBUNAL

MORIGAON
PIN-782105.

4:DEPUTY COMMISSIONER

MORIGAON
PIN- 782105.

5:THE SUPERINTENDENT OF POLICE (B)

MORIGAON
P.O. AND DIST. MORIGAON
ASSAM
PIN- 782105.

6:THE OFFICER-IN-CHARGE

JAGIROAD POLICE STATION

MORIGAON
ASSAM
PIN - 782105.

7:ELECTION COMMISSION OF INDIA

REP. BY THE SECRETARY
ELECTION COMMISSION
NEW DELHI
PIN -110001.

8:THE STATE COORDINATOR

NRC
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR R CHAKRAVORTY

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

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

05-06-2024

(M.R.Pathak, J)

Heard Mr. R. Chakravorty, learned counsel appearing for the petitioners. Also heard Mr. G. Sarma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 5 and 6 and Mr. H.K. Hazarika, learned Government Advocate, Assam for the respondent No. 4 as well as Mr. A. I. Ali, learned Standing Counsel, Election Commission of India for the respondent No.7.

2) The petitioner Nos. 1 and 2 are the daughters of Sri Joy Chandra Das @ Joy Chan Das and Durga Das @ Durga Devi Das.

3) In a proceeding before the Foreigners Tribunal No. 1, Morigaon Assam in Case No. F.T. (C) 473/2010 arising out of Reference IM(D)T Case No. 438/2004, referred by the Superintendent of Police (Border), Morigaon, the said Tribunal, by order dated 25.01.2018 opined both the petitioners, along with their parents Sri Joy Chandra Das @ Joy Chan Das and Durga Das @ Durga Devi Das and their sisters Smti Joytara Das as Foreigners under the Foreigners Act, 1946, holding that they had illegally entered into the territory of India (Assam) on or after 25.03.1971.

4) The learned counsel appearing for the petitioners submitted that the Tribunal wrongly implicated them in the said proceeding in Case No. F.T. (C) 473/2010, though their names were not referred by the Superintendent of Police (Border), Morigaon nor there was any enquiry with regard to that. Both of them were married and living with their husbands in different places; one under Jagiroad Police Station and the other under Sonapur Police Station.

5) The Court on 03.09.2018, while issuing notice called for the records of said F.T. (C) 473/2010, from the Foreigners Tribunal No. 1, Morigaon, Assam wherein, the impugned opinion was passed by the said Tribunal on 25.01.2018.

6) On perusal of the records of said F.T. (C) Case No. 473/2010, we found that there was a police enquiry with regard to one Sri Joy Chandra Das, son of late Basanta Das, while IM (D) T Case No. 438/2004, wherein the concerned Investigating Officer, resident of village Barkhal under Nelli Outpost of Jagiroad Police Station District Morigaon and the report of the Investigating Officer reflects that said Joy Chandra Das was found to be suspected illegal migrant.

7) On the basis of the said report of the concerned Investigating Officer, the Superintendent of Police (Border), Morigaon, Assam on 13.05.2004 forwarded the said IM (D) T Case No. 438/2004, relating to Joy Chandra Das to the Illegal Migrants (Determination by Tribunals), Morigaon on 07.06.2005 to determine as to whether the said Joy Chandra Das is an illegal migrant or not. However, after the judgment of the Hon'ble Supreme Court in the Case of "**Sarbananda Sonowal –vs- Union of India and Another,**" reported in (2005) 5 SCC 665 and after striking down of the IM(D)T Act, 1983 by the Hon'ble Apex Court, the said case of Sri Joy Chandra Das was converted into a proceeding under the Foreigners Act, 1946. Accordingly, F.T. (C) Case No. 473/2010 was registered before the Foreigners Tribunal No. 1, Morigaon, Assam.

8) It is seen from the records that the said Tribunal issued notice not only to Joy Chandra Das, but also to his wife and all the daughters including the petitioners. Though the enquiry and the reference was only with regard to said Joy Chandra Das and there was no such enquiry against the present petitioners, the notice issued to the petitioners without being referred by the Superintendent of Police (Border), Morigaon, the proceeding of F.T. (C)

473/2010 against the present petitioners is bad in law, unsustainable and illegal and accordingly, we set aside and quashed, the impugned opinion dated 25.01.2018 passed by the Foreigners Tribunal No. 1, Morigaon, Assam in F.T. (C) 473/2010, arising out of Reference IM (D) T Case No. 438/2004 with regard to the present petitioners, namely, Smti Kalpana Das and Smti Suntara Das.

9) The interim order passed earlier in this proceeding in favour of the petitioners on 03.09.2018 stands merged with this order.

10) It is up to the competent authority to initiate fresh enquiry against the petitioners regarding their nationality.

11) Registry shall return back the records of F.T. (C) 473/2010, along with a copy of this order to the Foreigners Tribunal No. 1, Morigaon, Assam forthwith.

JUDGE

JUDGE

Comparing Assistant