

GAHC010160552018



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

Case No. : WP(C)/4960/2018

ALIMA BIBI
W/O. NUR MOHAMMAD, R/O. VILLAGE- BIDYARDABRI PT.-III, P.S.
GOLAKGANJ, DIST. DHUBRI, ASSAM. PRESENTLY RESIDING AT VILL. NO.
1 BASHRAJA, P.O. HARIR HAT, P.S. BOXIRHAT, DIST. COOCH BIHAR, WEST
BENGAL.

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE MINISTRY OF HOME DEPARTMENT, NEW DELHI-1.

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

3:THE SUPERINTENDENT OF POLICE (B)

DHUBRI
ASSAM.

4:THE OFFICER-IN-CHARGE
DHUBRI POLICE STATION
DIST. DHUBRI
ASSAM.

5:THE DEPUTY COMMISSIONER

DIST. DHUBRI
ASSAM

Advocate for the Petitioner : MS F BEGUM

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

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

ORDER

Date : 05.06.2024
(M.K.Kalita, J)

- 1)** Heard Mrs. S. Roy, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned CGC, appearing for respondent No.1 and Mr. G. Sarma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 3 and 4 as well as Mr. H. K. Hazarika, learned Government Advocate, Assam for the respondent No. 5.
- 2)** This writ petition has been filed by the petitioner, namely, Alima Bibi, impugning the opinion/order dated 31.10.2016 passed by the learned Foreigners Tribunal 8th, Dhubri in FT Case No.8/210/GKJ/2015, whereby the petitioner was declared as a foreigner, under Foreigners Act, 1946, who had entered into India (Assam) on or after 25.03.1971.
- 3)** The facts relevant for consideration of this writ petition, in brief, are as follows:
 - i.** On the basis of a reference made under Section 8(1) of the Illegal Migrants (Determination by Tribunals) Act, 1983 [*hereinafter referred to as IMDT Act*] while the said Act was in force, to the Illegal Migrants (Determination) Tribunal, Dhubri to decide the question as to whether the present petitioner namely, Alima Bibi is an Indian citizen or not, the Case No. IM(D)T/1602/98 was registered.

ii. Later on, after striking down of the IMDT Act, 1983 by the Hon'ble Supreme Court of India in the case of "***Sarbananda Sonowal vs Union of India & Anr***" reported in **(2005) 5 SCC 665** and as per the direction of Hon'ble Supreme Court of India passed therein, the said Case No. IM(D)T/1602/98 was transferred to the Foreigners Tribunal 2nd, Dhubri, converting it into a proceeding under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964.

iii. Thereafter, on 16.10.2015, the aforesaid case was transferred to the learned Foreigners Tribunal 8th, Dhubri for disposal, which was re-registered as FT Case No.8/210/GKJ/2015 and notice was issued to the above-named petitioner. On 30.01.2016, the petitioner appeared before the learned Foreigners Tribunal 8th, Dhubri and submitted her written statement with some documents.

iv. Thereafter, the next two dates were fixed for evidence of the petitioner, however, she sought adjournment on both the occasions which were granted to her. Ultimately, on 30.03.2016 she submitted her evidence on affidavit along with some documents. The FT Case No.8/210/GKJ/2015 was, thereafter, fixed for cross-examination of the petitioner on several occasions. But, the petitioner on all the occasions filed adjournment petitions.

v. It appears from the record that, on 08.09.2016, learned Foreigners Tribunal 8th, Dhubri gave last chance to the petitioner for cross-examination and fixed the case on 28.09.2016. However, on 28.09.2016 also the petitioner remained absent by filing an

adjournment petition on the ground of her illness. But the Tribunal rejected the said adjournment petition and next date was fixed on 31.10.2016 for judgment/order.

vi. On 31.10.2016, the petitioner appeared before the learned Foreigners Tribunal 8th, Dhubri; however, the learned Foreigners Tribunal 8th, Dhubri passed the impugned opinion on that day, declaring the petitioner to be a foreigner under the Foreigners Act, 1946 who had entered into India (Assam) on or after 25.03.1971.

vii. It also appears that on that day i.e., on 31.10.2016, the petitioner was present before the Tribunal and had filed a petition bearing No. 1633, wherein a prayer was made by the petitioner, on the ground of illness, to give her an opportunity of cross-examination in connection with the said case. But, the learned Foreigners Tribunal 8th, Dhubri by the impugned order dated 31.10.2016 had rejected the said prayer and delivered its opinion against the present petitioner declaring her to be a foreigner under Foreigners Act, 1946 who had entered into India (Assam) on or after 25.03.1971.

- 4)** The learned counsel for the petitioner has submitted that on four dates preceding 31.10.2016, i.e., on 08.08.2016, 19.08.2016, 08.09.2016 and 28.09.2016, the petitioner could not appear before the learned Foreigners Tribunal 8th, Dhubri in the aforesaid case due to illness, however her counsel took steps on her behalf informing the learned Tribunal about her ill health and seeking adjournment on the said ground.

- 5)** The learned counsel for the petitioner has also submitted that the instant writ petition was filed on 24.07.2018 and the delay in approaching this Court was due to the fact that after passing of the impugned order, the petitioner's condition worsen and she had to go to her parental house at Cooch Behar. It is also submitted that due to poor financial condition, the petitioner could not immediately challenge the order of the Tribunal by which she was declared as a foreigner.
- 6)** The learned counsel for the petitioner has submitted that though the petitioner was personally present before the Tribunal on 31.10.2016, the learned Foreigners Tribunal 8th, Dhubri instead of giving her an opportunity of being cross examined, passed the impugned order.
- 7)** It is submitted by the learned counsel for the petitioner that as the petitioner is an Indian citizen by birth and her parents were also Indian citizen and were permanent resident of Cooch Behar in the State of West Bengal and that she would suffer irreparable loss, if she is not afforded with an opportunity to prove her nationality and therefore, it is prayed by learned counsel for the petitioner that the impugned opinion/order may be set aside and the FT Case No.8/210/GKJ/2015 be remanded back to the learned Foreigners Tribunal 8th, Dhubri.
- 8)** The learned Standing Counsel, Home Department, Assam has submitted that the learned Foreigners Tribunal 8th, Dhubri had rightly opined that the present petitioner is a foreigner who had entered into India (Assam) on or after 25.03.1971 as in spite of the fact that several opportunities were granted to the petitioner by the learned Tribunal to

present herself for cross examination, however, on more than ten dates she remained absent and therefore, it is submitted by him that this case does not justify any interference by this Court in the impugned opinion/judgement in exercise of its writ jurisdiction.

- 9)** We have heard both the sides and have perused materials on record including the original record of Case No. FT 8/210/GKJ/2015.
- 10)** In the impugned order dated 31.10.2016, the learned Foreigners Tribunal 8th, Dhubri has observed that on ten occasions since 27.04.2016, adjournments were granted to the petitioner. However, on perusal of the order sheets, it appears that after filing of the evidence on affidavit by the petitioner on 30.03.2016, on subsequent three dates, i.e., on 27.04.2016, 12.05.2016 and 30.05.2016, the petitioner was present before the learned Tribunal and no adjournments were sought by her on those days, but, she could not be cross examined on those dates. However, on the next date, i.e., on 10.06.2016, her prayer for adjournment was rejected. It also appears that thereafter on 13.07.2016 and 25.07.2016, the petitioner was present before the learned Tribunal when she could have been cross examined, but, she was not cross-examined.
- 11)** Thereafter, from 08.08.2016 for five consecutive dates the petitioner could not appear due to medical grounds. Though, she again appeared before the Tribunal on 31.10.2016, the impugned order was passed though on that day also, she was available before the learned Foreigners Tribunal and she could have been cross examined.
- 12)** Under the above facts and circumstances, we are of the considered

opinion that when the petitioner was available before the learned Tribunal on six occasions after she had filed her evidence on affidavit, and no adjournments were sought on those occasions, she could have been cross examined on those dates and arguments from her side could have been heard. However, the same was not done. Even on 31.10.2016, the petitioner was present before the learned Tribunal and she could have been cross examined on that day which, however, was not done by the Tribunal.

- 13)** Though, we are of the considered opinion that there was laxity on the part of the petitioner also, however, under the facts and circumstances of this case and in the interest of justice, the petitioner should have been allowed to be cross examined and her counsel should have been be allowed to argue on her behalf.
- 14)** Accordingly, we are of the considered opinion that the petitioner was not afforded a reasonable opportunity of being cross examined and to show that she is not a foreigner. As such, we hold that the learned Foreigners Tribunal 8th, Dhubri had erred in passing the impugned opinion/order dated 31.10.2016 against the petitioner without affording her the opportunity of being cross examined.
- 15)** We, accordingly set aside the impugned opinion/order dated 31.10.2016 subject to payment of a cost of ₹ 5000 by the petitioner to the District Legal Services Authority, Dhubri and remand the FT Case No.8/210/GKJ/2015 to learned Foreigners Tribunal 8th, Dhubri for rendering a fresh opinion after affording the opportunity of being cross-examined to the petitioner.

- 16)** The above-named petitioner shall appear before the Secretary, District Legal Services Authority, Dhubri, on or before 06.07.2024, and shall deposit the cost of ₹ 5000 in the cost fund account of the said authority and shall take written receipt of such payment. Thereafter, on 10.07.2024, the petitioner shall appear before the learned Foreigners Tribunal 8th, Dhubri in FT Case No.8/210/GKJ/2015, along with a certified copy of this order and the written receipt in original regarding payment of such cost and shall make herself available for the cross-examination.
- 17)** However, it is hereby made clear that on failure on the part of the petitioner to appear before the learned Foreigners Tribunal 8th, Dhubri on the aforementioned date, i.e. on 10.07.2024 as directed above and thereafter, on the dates fixed by it, the said Tribunal shall be at liberty to proceed against the petitioner in FT Case No.8/210/GKJ/2015 as per the provisions of law.
- 18)** The Registry shall return the records of FT Case No.8/210/GKJ/2015 to the learned Foreigners Tribunal 8th, Dhubri forthwith, along with a copy of this order.
- 19)** With the above observations and directions, this writ petition is accordingly allowed to the extent above.

JUDGE

JUDGE

Comparing Assistant