

GAHC010173512024



AS:11895-DB

2024:GAU-

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

Case No. : WP(C)/4385/2024

MUSSTT MAJIRAN NESSA
D/O- LT. FARHAD ALI, W/O- BOSIR ALI, VILLAGE- BANDAR KHOWA, P.S.
AND P.O. SORBHOG, DISTRICT- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
TO BE REPRESENTED BY THE SECRETARY, GOVERNMENT OF INDIA,
DEPARTMENT OF HOME AFFAIRS, NEW DELHI, INDIA

2:THE STATE OF ASSAM
TO BE REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
ASSAM
DEPARTMENT OF HOME
DISPUR
GUWAHATI-06

3:THE NATIONAL REGISTRAR OF CITIZEN
TO BE REPRESENTED BY THE STATE CO-ORDINATOR
ASYUT PLAZA BANGAGRAH
KAMRUP (M)
ASSAM

4:ELECTION COMMISSION OF INDIA
TO BE REPRESENTED BY THE CHIEF ELECTION COMMISSION OF INDIA

5:THE DEPUTY COMMISSIONER
BARPETA
DIST- BARPETA
ASSAM
PIN- 781301

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
DIST- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : Mr M U Ahmed,

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

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

ORDER

29.11.2024

[K.R. Surana, J.]

Heard Mr. M.U. Ahmed, learned counsel for the petitioner. Also heard Mr. P.K. Medhi, learned CGC representing respondent no. 1; Mr. G. Sarma, learned Standing Counsel for FT matters representing the respondent nos. 2, 3 & 6; Mr. H. Kuli, learned counsel on behalf of Mr. A.I. Ali, learned Standing Counsel, ECI for the respondent no. 4; and Mr. P. Sarma, learned Additional Senior Government Advocate appearing for the respondent no. 5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the *ex parte* opinion dated 03.12.2022, passed by the learned Member, Foreigners' Tribunal, Barpeta 11th in Case no. (Bpt/11th) F.T. 1838/2017 arising out of P.E. no. I.M.(D)T. 10253/98, whereby the petitioner was declared to be a foreigner of post 25.03.1971.

3. The learned counsel for the petitioner has submitted that although the proceedings

before the learned Tribunal was adjourned on five occasions, but the learned Tribunal could not take up the matter due to paucity of time and on seven dates, the learned counsel engaged by the petitioner was absent. It is submitted that as the dates were not communicated to the petitioner, she defaulted in the proceedings which led to the *ex parte* opinion by the learned Tribunal. She also submitted that as the final opinion rendered on 03.12.2022 was communicated to the petitioner, the petitioner also filed a complaint against her engaged counsel before the Bar Council of Assam, Nagaland, etc. on 12.08.2024. Accordingly, there is some delay of about two years in assailing the said opinion.

4. The learned Standing Counsel for the FT matters has opposed to the prayer made in this writ petition on the ground that the default on the part of the petitioner can be noted from the contents of the impugned opinion. Moreover, it is submitted that despite a lot of effort taken by the Superintendent of Police (Border), Barpeta, the petitioner could be apprehended.

5. On the projection made by the petitioner that the petitioner has sufficient document to prove his citizenship, this Court is of the considered opinion that one opportunity may be granted to the petitioner to contest the proceedings.

6. Accordingly, the impugned *ex parte* opinion dated 03.12.2022, passed by the learned Member, Foreigners' Tribunal, Barpeta 11th in Case no. (Bpt/11th) F.T. 1838/2017 is conditionally set aside on the following terms.

- (i) The petitioner, namely, Majiran Nessa shall appear before the Superintendent of Police (Border), Barpeta within 10 (ten) 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 recalled and the *ex parte* opinion dated 03.12.2022 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, Barpeta and produce a copy of the acknowledgement along with a certified copy of this order before the learned Member, Foreigners' Tribunal, Barpeta within 15 (fifteen) 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, Barpeta shall give an opportunity to the petitioner to prove her case and decide the matter afresh in accordance with law.

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

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

JUDGE

JUDGE

Comparing Assistant