

GAHC010194412024



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

Case No. : WP(C)/4854/2024

HAZERA KHATUN @ HAZARA BIBI
D/O- ASIRUDDIN BEPARI @ ASIRUDDIN,
W/O- NABI HUSSEIN,
VILL- GASPARA,
P.O.- DHARMASALA,
P.S. AND DIST.- DHUBRI, ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN,
TRILOK MARG, NEW DELHI- 110001.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER

NEW DELHI- 110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

4:THE STATE COORDINATOR OF NATIONAL REGISTER OF CITIZENS
ASSAM
1ST FLOOR
ACHYUT PLAZA

GUWAHATI SHILLONG ROAD

BHANGAGARH
GUWAHATI
ASSAM

PIN- 781005.

5:THE DISTRICT COMMISSIONER OF DHUBRI DISTRICT
DHUBRI
P.O.
P.S. AND DIST.- DHUBRI

ASSAM
PIN- 783301.

6:THE SUPERINTENDENT OF POLICE (BORDER)
DHUBRI DISTRICT
DHUBRI
P.O.
P.S. AND DIST.- DHUBRI

ASSAM
PIN- 783301

Advocate for the Petitioner : MR. A T SARKAR, MR. S HANDIQUE,MR S HUSSAIN

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 06.11.2024
(K.R. Surana, J)

Heard Mr. A.T. Sarkar, learned counsel for the petitioner. Also heard Ms. K. Deka, learned counsel appearing on behalf of Ms. R. Devi, learned CGC for respondent no.1; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned standing counsel for the ECI, respondent no.2; Ms. A. Verma,

learned standing counsel for the Home Department, respondent nos.3 and 6; and Mr. P. Sarma, learned Govt. Advocate for respondent no.5. None appears on call for the respondent no.4.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the impugned opinion dated 04.07.2022, passed by the learned Member, Foreigners Tribunal No.1, Dhubri in F.T. Case No. 2416/D/11 [Police Ref. Case No. IM(D)T/159/ 2003], by which the petitioner was declared as an illegal migrant.

3. In the proceedings of said F.T. Case No. 2416/D/11, the petitioner appeared, filed written statement with documents and also adduced evidence on affidavit. The case was decided on contest.

4. Before this Court and during the hearing of the writ petition today, the counsel for the writ petitioner has argued that the very initiation of the case was bad. In support, it is submitted that in the Enquiry Report of the enquiry officer as at paragraph 20(1) it has been recorded that "her father name appeared in the NRC of 1951 vide H/No. 44, H/H-81, Sl. No-12, vill- Khodarchar, P.S.-Dhubri". In the next sub-paragraph, there is a note which is illegible. As against paragraph-22, it is recorded that "during my enquiry, it appears a *prima facie* (illegible) Hazara Bibi, W/o. Nobi Hussain, vill- Gaspara is not an illegal migrant". The same is signed by the Enquiry Officer Ajit Bhattacharjee, who is a Sub Inspector, W.P., which perhaps is the abbreviation of "Watch Post". The Enquiry Report was signed on 10.07.2003. The Inspector of Police, Dhubri has made an endorsement on 31.07.2003 to the effect that "It appears during enquiry that the suspect is not appears as I.M.". His signature is illegible. The Deputy Superintendent of Police has also made an endorsement that "It appears during enquiry that the suspect is not appears as I.M.", I.M. perhaps is the

abbreviation of "Illegal Migrant". His signature is illegible and is counter signed by Sub Divisional Judicial Magistrate (Sadar) on 10.02.2004, which is also illegible. The Superintendent of Police, Dhubri has also made an endorsement in the said report of the enquiry officer that "I agree with the recommendation of S/c referred to TBL for favour of disposal". The endorsement is on 08.04.2004 and the signature is illegible.

5. We have perused the case records received in original and find that the submissions made above stands vindicated.

6. It is, therefore, the case of the petitioner that in view of the report of the Enquiry Officer and that of the Referral Authority, the issuance of Notice by the Tribunal stood vitiated, more particularly of having offended the ratio laid down by the Full Bench of this Court at paragraph 98 in *State of Assam & Ors. v. Moslem Mondal & Ors.*, reported in 2013 (1) GLT 809; and *Jelekha Khatun v. Union of India*, 2021 (5) GLT 202.

7. On having heard the learned counsel for the parties and on perusal of the materials on record, we first take note of the observations made in paragraph-98 of *Moslem Mondal (supra)* to the effect that while it is the obligation of the Referral Authority while making reference to produce all materials collected during investigation before the Tribunal, it is also the requirement of the Tribunal to *prima facie* satisfy itself about the existence of the main grounds before issuing Notice to a proceedee.

8. In the context above it is seen from the case at hand that the Enquiry Officer Shri Ajit Bhattacharjee, Sub-Inspector (B), Gaspara Watch Post, Dhubri Police Station made observation in the Enquiry Report that the petitioner is not an illegal migrant. The Deputy Superintendent of Police, Dhubri, also made

observation that the petitioner is not an illegal migrant and finally the Referral Authority i.e. the Superintendent of Police (Border), also agreed with the recommendation and referred to Tribunal for favour of disposal.

9. On the face of the materials on record, evidently, the Tribunal had issued notice without first satisfying itself as to the requirement of issuing notice to the petitioner. Trite to say, a Foreigners Tribunal assumes jurisdiction only after a reference is made. The jurisdiction is to render an opinion within the terms of the reference and not beyond. To reiterate, it is well settled that the Foreigners Tribunal requires to *prima facie* satisfy itself with regard to the existence of the main grounds before issuing Notice. While going through the materials collected during investigation, if a Tribunal finds that the reference made was incorrect or faulty or did not require a proceeding to be initiated on the basis of the report of the Referral Authority, the Tribunal should return back the reference to the Referral Authority, i.e. the Superintendent of Police to reconsider whether a fresh reference is required to be made.

10. Turning to the facts in hand, it is seen that when the Referral Authority had opined that the petitioner was not an illegal migrant, the question of issuing notice by the Tribunal could not have arisen at the first place.

11. On the findings above, we are of the considered view that the Tribunal had issued notice and had initiated proceedings without satisfying itself as to the requirement of issuing notice to the petitioner. The proceeding so initiated vide F.T. Case No.2416/D/11, being beyond jurisdiction, as such, the consequential impugned opinion passed on 04.07.2022 cannot stand the scrutiny of law and is liable to be set aside, which we accordingly do. We, however, leave it open to the Superintendent of Police (Border), Dhubri to make fresh investigation if the occasion arises, with further observation that if on such

investigation it is found that there are materials available to proceed against the petitioner, fresh reference can be made to the Tribunal concerned.

12. To the extent above, the writ petition stands allowed.

13. Registry to inform the concerned Foreigners Tribunal and the Superintendent of Police (Border), Dhubri.

14. Let the records received from the Tribunal be returned back.

JUDGE

JUDGE

Comparing Assistant