

GAHC010198362017



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

**Case No. : WP(C)/3980/2017**

ADARI MAJUMDAR @ ADARI BALA MAZUMDAR @ ADORI MAZUMDAR  
W/O. JATRA MOHAN MAZUMDAR, D/O. LT. DURLABH BISWAS, VILL.  
KHAGALPUR PART-III, P.S. ABHAYAPURI, DIST. BONGAIGAON, ASSAM.

VERSUS

THE UNION OF INDIA and 4 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, NEW DELHI-110001.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM  
HOME DEPTT.  
DISPUR  
GHY.-06.

3:THE COMMISSIONER and SECY.  
TO THE GOVT. OF ASSAM  
HOME DEPTT.  
DISPUR  
GHY.-06.

4:THE SUPDT. OF POLICE B

BONGAIGAON  
ASSAM.

5:THE DY. COMMISSIONER

BONGAIGAON  
PIN-783380

**Advocate for the Petitioner : MS.J CHAKRABORTY**

**Advocate for the Respondent : GA, ASSAM**

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

**ORDER**

**Date : 21-05-2024**  
**(M.R.Pathak, J)**

Heard Mr. A. A. Dewan, learned counsel appearing for the petitioner and Mr. G. Sarma, learned standing counsel, Home Department, Assam for respondent Nos. 2, 3 and 4. Also heard Mr. P. Sarma, learned Senior Government Advocate, Assam for the respondent No. 5.

**2)** In a reference being made by the Superintendent of Police (Border), Bongaigaon [in short SP(B), Bongaigaon] vide IMDT BNGN 1798/04, the learned Foreigners Tribunal, Bongaigaon No.2 at Abhayapuri by an ex-parte order dated 18.08.2016 passed in Case No. BNGN/FT/CASE NO 2035/07 opined the petitioner to be a foreigner under the Foreigners Act, 1946 who had entered into India from Bangladesh illegally after 25.03.1971.

**3)** Dissatisfied with the said opinion dated 18.08.2016, the petitioner has filed this writ petition on 19.06.2017, praying amongst others, to set aside and quash the impugned ex-parte order dated 18.08.2016 passed by the learned Foreigners Tribunal, Bongaigaon No.2 at Abhayapuri in said Case No. BNGN/FT/2035/07.

**4)** Petitioner contended that due to her illness and for obtaining the certified copies, she could not file her evidence on affidavit before the Tribunal and without giving further chance to file her evidence on affidavit, the Tribunal passed the

impugned opinion dated 18.08.2016 in spite of having all the relevant documents in support of her case to prove to be an Indian Citizen. As such the petitioner is praying for further opportunity to contest the case again before the Tribunal to establish her identity as an Indian Citizen in the interest of justice.

**5)** The petitioner stated that for her treatment she was at West Bengal for the period from 30.03.2016 to 18.08.2016 and though, she returned after 18.08.2016, but on the advice of her physician, she was taking rest. Thereafter, she was busy in collecting certified copies of the voters lists and other documents to prove her nationality.

**6)** However, the petitioner did not annex any medical documents and/or certificate in this writ petition to prove on record that she was at West Bengal taking treatment during the period from 30.03.2016 to 18.08.2016, the date on which the impugned order was passed by the Foreigners' Tribunal, Bongaigaon No.2, at Abhayapuri. Petitioner made the said statement in this writ petition at Para 4, from her knowledge, but without any medical certificate.

**7)** Since the Court was not satisfied with the explanation pertaining to her default before the Tribunal, as such the Court on 10.07.2017 granted three weeks' time to the petitioner to file her additional affidavit. Even after expiry of more than two years as she did not file any such affidavit in the matter, the Court by order dated 03.12.2019 granted further three weeks' time to the petitioner to file such affidavit and also called for the records of Case No. BNGN F.T./2035/2007 from the Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri. Registry has received the record that was called for, but the petitioner till date did not file her affidavit as directed by the Court.

**8)** Finding that though by order dated 18.08.2016, the Tribunal declared her to be a foreigner of post 25.03.1971, but the authorities concerned did not take her

into custody, therefore, the Court on 16.03.2021 granted interim protection and interim bail to the petitioner, which is still in force.

**9)** From the records of the case it is seen that during the force of the Illegal Migrants (Determination by Tribunals) Act, 1983, the Superintendent of Police (Border) [SP(B), in short] Bongaigaon, registering IM(D)T Case No. 1798 of 2004, by an order dated 29.11.2004, directed the concerned police authority to initiate an enquiry and to submit a report regarding the nationality of the petitioner. Pursuant to the same, the Sub-Inspector (Border) Bongaigaon after making an enquiry submitted its report dated 12.05.2005, before the SP(B) Bongaigaon, indicating the petitioner to be a suspected foreigner who came to India on or after 25.03.1971 without any valid document.

**10)** Considering the said report, the SP(B), Bongaigaon on 16.10.2006, referred the said IM(D)T Case No. BNGN/1798 of 2004 to the Foreigners' Tribunal, Bongaigaon, under the IM(D)T Act, 1983 to determine as to whether the petitioner is a foreigner from Bangladesh, who entered into India illegally on or after 25.03.1971 or not.

**11)** Pursuant to the same, Case No. BNGN F.T./2035/2007 was registered before the Foreigners Tribunal, Bongaigaon, against the petitioner, for determination of her nationality.

**12)** As in the meanwhile the Hon'ble Supreme Court by its judgment dated 12.07.2005 passed in the case of *Sarbananda Sonowal (I) -Vs- Union of India and another*, reported in (2005) 5 SCC 665, struck down the said IM(D)T Act, 1983, directing that all the matters pending before the Tribunals under the said 1983 Act have to be decided as per the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964; the proceeding against the petitioner in said Case No. BNGN F.T./2035/2007 was initiated under the provisions of the Foreigners

Act, 1946, wherein the Foreigners Tribunal, Bongaigaon on 16.08.2012 issued notice to her under the provisions of the Foreigners (Tribunals) Order, 1964.

**13)** On receipt of such notice from the Tribunal, the petitioner appeared before it on 15.10.2012, engaging her counsel, and took time to file her reply, which was accordingly granted.

**14)** Subsequently, after taking time on five occasions after her first appearance on 15.10.2012, the petitioner on 18.03.2014 filed her written statement in said Case No. BNGN F.T./2035/2007 along with photo copies of certain documents to prove her nationality.

**15)** The Tribunal on 18.03.2014 fixed 19.06.2014 for examination of the documents and on 19.06.2014, petitioner though remained present, time was sought for and the matter was fixed on 17.09.2014. However, on the dates fixed, i.e. on 17.09.2014, 26.12.2014, 31.03.2015, 02.07.2015 for examination of the documents, the petitioner except 31.03.2015, remained absent on the other dates without taking steps and on 31.03.2015 she appeared and prayed for time, which was granted. On 02.07.2015, the Tribunal fixed the matter on 05.10.2015 for examination of documents.

**16)** In the meanwhile, Foreigners Tribunal No.2, Bongaigaon at Abhayapuri was constituted. As such on 04.09.2015, the records of said Case No. BNGN F.T./2035/2007 was withdrawn from the Foreigners Tribunal, Bongaigaon and transferred it to the Foreigners Tribunal No.2, Bongaigaon at Abhayapuri keeping the date of the case as fixed earlier, i.e., 05.10.2015 for examination of documents. However, on 05.10.2015, the petitioner, with steps, remained absent in the case before the Foreigners Tribunal No.2, Bongaigaon at Abhayapuri and the matter was fixed on 05.11.2015.

**17)** On 05.11.2015, the petitioner appeared before the Tribunal, but sought for

time again. Finding that earlier on many occasions the petitioner took time, the Tribunal granted last chance to her to furnish documents, if any, and fixed the matter on 03.12.2015 for examination of documents.

**18)** On 03.12.2015, though the petitioner was present, but the Member of the Tribunal was on leave and therefore, the matter was fixed again on 18.01.2016. On 18.01.2016, the petitioner did not appear and the Tribunal considering the fact that since some organizations called for Bandh on that day, the petitioner perhaps failed to appear and accordingly, fixed the matter on 19.02.2016 granting last chance to her for examination of documents.

**19)** On 19.02.2016, the petitioner submitted the documents before the Tribunal, which were examined and 30.03.2016 was the date fixed for Evidence in Affidavit. On 30.03.2016, without any steps, the petitioner remained absent. Therefore, the Tribunal on 30.03.2016 fixed the matter on 25.05.2016 for necessary order.

**20)** Even on 25.05.2016, the petitioner remained absent without any steps and as such the Tribunal on 25.05.2016 fixed the matter for order on 18.08.2016.

**21)** On 18.08.2016 also the petitioner remained absent without any steps and the Tribunal on 18.08.2016 itself, accordingly passed the impugned ex-parte opinion.

**22)** The petitioner in her written statement stated before the Tribunal that she was born in the year 1965 at Village - Nayagaon Part-III under the then 43 No. Bongaigaon Legislative Assembly Constituency, now under Abhayapuri South (SC) LAC. She stated that name of her father appeared in the electoral rolls in the years 1966 and 1970 from said Village - Nayagaon Part-III under 43 No. Bongaigaon LAC.

**23)** It is also stated that after her marriage with Jatra Mohan Mozumdar, son of

Late Agni Mohan Mozumdar of Village - Khagarpur Part-III under Abhayapuri Police Station, her name was enrolled in the electoral rolls from Village - Khagarpur Part-III in the years 1989, 2008 and 2011 under 35 No. Abhayapuri South (SC) LAC.

**24)** Along with her written statement, the petitioner annexed voters lists of the years 1966 and 1970 relating to 43 No. Bongaigaon LAC reflecting the name of her father from Village - Nayagaon Part-III as well as the voters lists of the years 1989, 2008 and 2011 relating to 35 No, Abhayapuri South (SC) LAC reflecting her name with her husband from Village - Khagarpur Part-III.

**25)** As per the provisions of the Foreigners (Tribunals) Order, 1964, a statutory Order being framed under Foreigners Act, 1946, a proceedee is required to submit his/her reply to the show cause within 10 (ten) days and thereafter, another 10 (ten) days to produce evidence in support of his or her case.

**26)** Further, as per said 1964 Order, the Foreigners Tribunal is required to dispose of a case within a period of 60 (sixty) days of receipt of the reference from the competent authority. Though there is a provision to grant an adjournment but the Foreigners Tribunal is required to consider such plea sparingly by recording the reasons in writing.

**27)** From the records, as noted above, it can be seen that from 15.10.2012, i.e., the date of appearance of the petitioner in the case till 18.08.2016, the date of passing the impugned ex-parte opinion by the Tribunal, the petitioner/proceedee got ample chances to file her written statement in the case for examination of documents and for filing her written evidence on affidavit, and therefore, the claim of the petitioner that without giving further chance to file her evidence on affidavit the Tribunal passed the impugned ex-parte opinion dated 18.08.2016, is not tenable.

**28)** However, from the impugned order dated 18.08.2016, we have seen that the

Tribunal merely came to the finding that the petitioner submitted photo copies of some documents along with written statement, which is not admissible in the eye of law and that she did not prove that she is not a foreigner who entered into India from Bangladesh on or after 25<sup>th</sup> March, 1971 and thus failed to discharge her duty under Section 9 of the Foreigners Act, 1946. But the Tribunal in its said order dated 18.08.2016 did not discuss the submissions made by the petitioner in her written statement as well as the documents she annexed with it.

**29)** Law is well settled that the administrative authorities, the quasi-judicial authorities like the Tribunals are bound to give reasons in their findings and orders, in absence of which such findings and orders would be liable to set aside and quashed. The Hon'ble Supreme Court in the case of *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota -Vs- Shukla and Brothers* reported in (2010) 4 SCC 785 have held that —the administrative authority and Tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. Thus it will not be far from an absolute principle of law that the Courts should record reasons for their conclusion to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate Court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law or whether it has adopted the correct legal approach. To subserve the purpose of justice delivery system, therefore it is essential that the Courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing.

**30)** In the present case, we found that the Tribunal while passing the

impugned ex-parte opinion on 18.08.2016 did not discuss the statements of the petitioner made in her written statement and the documents annexed by her with it. In the absence of such discussions and reasons for discarding them, we are of the view that the impugned order dated 18.08.2016 is bad in law.

**31)** Considering the entire aspect of the matter, the impugned order dated 18.08.2016 passed by the learned Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri in Case No. BNGN/FT/2035/07 is set aside and quashed and the matter is remanded back to the said Tribunal, directing it to decide the said matter by passing a fresh order, on consideration of the evidence to be adduced by the petitioner.

**32)** Looking at the conduct of the petitioner, we direct her to pay a cost of Rs. 10,000/- (Rupees Ten Thousand) which she shall deposit before the Secretary, District Legal Services Authority, Bongaigaon on or before **21.06.2024**.

**33)** Subject to the payment of such cost by her, the petitioner shall appear before the Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri in said Case No. BNGN/FT/2035/07 on **26.06.2024** along with a certified copy of this order and the receipt in original regarding the deposit of said amount of Rs. 10,000/- before the Secretary, District Legal Service Authority, Bongaigaon, as directed above.

**34)** On said 26.06.2024 itself, the petitioner shall submit her written evidence-on-affidavit in Case No. BNGN/FT/2035/07 before the Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri, along with the relevant documents on the basis of which she wants to prove her nationality and those documents shall be examined on that day itself. Further time shall not be granted to the petitioner in this regard.

**35)** It is made clear that in the event the petitioner does not appear before the said Tribunal on 26.06.2024 and thereafter, on the dates fixed by it, then the Tribunal shall be at liberty to dispose of the matter on the documents available before it as per the provisions of the Foreigners Act, 1946, the Foreigners (Tribunals) Order, 1964 and in accordance with law.

**36)** Since this order has been passed in presence of the learned counsels for the parties, the Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri need not issue any fresh notice to the petitioner with regard to said Case No. BNGN/FT/2035/07.

**37)** The interim order passed earlier in this proceeding on 16.03.2021 stands merged with this order.

**38)** Registry shall return the records of Case No. BNGN/FT/2035/07 along with a copy of this order forthwith, to the Foreigners' Tribunal, Bongaigaon No.2 at Abhayapuri.

**39)** With the above observations and direction, this writ petition stands allowed to the extent above.

**JUDGE**

**JUDGE**

**Comparing Assistant**