

GAHC010202222024



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

Case No. : WP(C)/5119/2024

MUSLEMA KHATUN @ MOSLEMA KHATUN
D/O- LATE MOSADER ALI @ MOSADAR ALI, W/O- ABDULLAH SHEIKH,
R/O- VILL.- KAKRIPARA PT-II (PUBERGAON), P.O. KAKRIPARA, P.S.
MANKACHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
TO BE REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF
INDIA, DEPARTMENT OF HOME AFFAIRS, NEW DELHI.

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

3:THE ELECTION COMMISSION OF INDIA
TO BE REPRESENTED BY THE CHIEF ELECTION COMMISSIONER OF
INDIA
NIRVACHAN ASHOKA ROAD
NEW DELHI.

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

5:THE SUPERINTENDENT OF POLICE (B)

SOUTH SALMARA MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

6:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
ASSAM

7:THE SUPERINTENDENT OF POLICE
DHUBRI
DIST. DHUBRI
ASSA

Advocate for the Petitioner : MR. A R BHUYAN, MR N Z CHOUDHURY,MR S ABDULLAH

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 MANISH CHOUDHURY

ORDER

22.11.2024

(K.R. Surana, J.)

Heard Mr. M. U. Ahmed, learned counsel for the petitioner. Also heard Ms. A. Verma, learned Standing Counsel, FT and Home Department for the respondent Nos. 2, 5 and 7; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, learned Standing Counsel, Election Commission of India, for the respondent No.3 and Mr. P. Sarmah, learned Additional government advocate appearing for the respondent No.6.

2. There is no representation for the respondent Nos. 1 and 4.

3. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the *ex parte* order dated 30.08.2024, passed by the learned Member, Foreigner's Tribunal, South Salmara Mankachar in FT Case No. 318/2018, arising out of IM (D) T Case No.

5523/D/1998.

4. The learned counsel for the petitioner projects that initially due to petitioner's illness, she could not file a written statement and the matter was adjourned on 09.11.2023, and fixing the next of date of proceeding on 21.12.2023. It is submitted that on 08.02.2024, 07.03.2024 and 08.04.2024, without informing the petitioner her counsel took adjournment. Thereafter, on 18.05.2024, the learned counsel engaged by the petitioner had prayed for withdrawal of vakalatnama. However, the learned Tribunal had directed her said counsel to serve a notice to the petitioner and inform her about the next date of 17.08.2024, which was not done and therefore, the matter was fixed for *ex parte* hearing on 25.07.2024.

5. It is projected that the learned counsel for the petitioner had issued a notice to the petitioner on 25.07.2024. However, on the same day, i.e., 25.07.2024, the petitioner appeared before the learned Tribunal through the same learned counsel with a prayer to vacate the order dated 18.07.2024, to proceed *ex parte* against the petitioner and prayed for acceptance of her written statement. However, the said prayer was rejected. Thereafter, the petitioner had approached this Court by filing WP(C) 4242/24, and the matter was called on 02.09.2024. However, by that time, the *ex parte* opinion was pronounced for which the said writ petition was dismissed on withdrawal with liberty to the petitioner to assail the final opinion. Accordingly, the present writ petition has been filed.

6. The learned Counsel for the FT and Home Department has opposed the prayer for interference with the *ex parte* opinion dated 30.08.2024, on the ground that the learned Tribunal is required to dispose of the references made before it in a time bound manner. Therefore, in non-

appearance as well as non-participation of the petitioner in the proceedings were at her own risk and therefore, this is a case where there is no evidence at all for which the order of the Tribunal does not warrant any interference.

7. We take note of the fact that as per order dated 18.05.2024, there was a direction to the learned counsel for the petitioner to serve her a notice about the next date of the matter being fixed on 18.07.2024. On 18.07.2024, the learned Tribunal has recorded that the engaged counsel was absent without steps. The petitioner has annexed copy of the notice dated 24.07.2024, issued by her counsel which is annexure-8 of the writ petition. Therefore, in this case, the order to proceed *ex parte* against the petitioner was passed on 25.07.2024. However, on the same date, the petitioner had appeared through the same learned counsel and prayed for setting aside the *ex parte* opinion which was rejected on the ground that the petitioner is bringing her counsel and thereby misleading the Tribunal and accordingly, the said petition was rejected.

8. We also take notice of the fact that against the order to proceed *ex parte* and the rejection of her petition to participate in the proceedings by order dated 25.07.2024, the petitioner has approached this Court by filing this writ petition. By order dated 02.09.2024, this Court allowed the petitioner to withdraw the said writ petition with liberty to assail the opinion rendered in the proceedings of FT. Case No. 318/2018.

9. Although there is a clear default of the petitioner to take steps on at least 4 dates, but the explanation tendered by the petitioner for non-taking of steps appears to be plausible and therefore, the Court is inclined to interfere with the orders dated 18.07.2024 and 25.07.2024, passed by the

learned Member, Foreigner's Tribunal, South Salmara Mankachar in F.T. Case No. 318/2018, as well as the *ex parte* opinion dated 30.08.2024, passed by the said learned Tribunal in the said proceeding.

10. As citizenship is a important right, the petitioner is entitled to get one last opportunity of contesting the reference.

11. Resultantly, the proceedings of FT. Case No.318/2018 is restored back to the file of the Foreigner's Tribunal, South Salmara Mankachar.

12. The petitioner shall physically appear and produce a certified copy of this order before the said learned Tribunal within 04.12.2024.

13. On appearance of the petitioner, the learned Tribunal shall grant one reasonable opportunity to petitioner to file written statement along with all relevant documents. Thereafter, the learned Tribunal shall give a reasonable opportunity to the petitioner to file her evidence and dispose of the matter in accordance with law.

14. Accordingly, this writ petition is allowed and disposed of at the motion stage without issuance of notice upon the respondents.

JUDGE

JUDGE

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Comparing Assistant