

GAHC010203312024



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

Case No. : WP(C)/5363/2024

BIMALA KHATOON @ BIMOLA BEGUM
D/O- LATE FATIK ALI,
@ FATIK MIYA,
R/O- VILLAGE KIRAKARA (FAHURATALI),
P.S- SIPAJHAR, DIST- DARRANG, ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, SASTRI BHAWAN, NEW DELHI- 110001.

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

3:THE ELECTION COMMISSIONER OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE COORDINATOR
OF NRC
ASSAM
1ST FLOOR
ACHYUT PLAZA
G.S ROAD.
BHANGAGARH
GUWAHATI-05

DIST- KAMRUP (M)

5:THE DISTRICT COMMISSIONER
DARRANG
MANGALDAI
ASSAM
PIN-784125

6:THE SUPERINTENDENT OF POLICE (B)
DARRANG
MANGALDAI
ASSAM
PIN-784125

7:OFFICER IN CHARGE
SIPAJHAR POLICE STATION

DIST- DARRANG
ASSAM
PIN-78414

Advocate for the Petitioner : MS. D GHOSH, MR. S. K. CHAKMA,MS H BETALA,MS N DEKA

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

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 27.11.2024
(S.K. Medhi, J.)

1. Heard Ms. H. Betala, the learned counsel for the petitioner. Also heard Mr. J. Payeng, learned Standing Counsel appearing on behalf of the Home Department as well as Mr. H. Kuli, learned counsel appearing on behalf of the Election Commission of India.

2. The instant petition under Article 226 read with Article 227 of the Constitution of India has been filed assailing an order dated 30.12.2017 passed by the learned Foreigners' Tribunal No. 4, Darrang, Assam in F.T. 4th Case No.

77/2017 whereby the petitioner was declared to be a foreigner who entered into India (Assam) after 25th March, 1971.

3. Ms. Betala, the learned counsel for the petitioner has submitted that the order is admittedly an ex-parte one, and the petitioner was deprived from an effective opportunity to defend herself. By drawing the attention of this Court to the impugned order, the learned counsel has submitted that there is an observation that the petitioner had failed to appear in spite of proper service of notice. She however, points out that with regard to the aspect of proper service of notice, the observation made by the learned Member is that the copy of the notice was affixed on the notice board of the Bajana Pathar Gaon Panchayat and the same was proved as Exhibit-1. The said affixation was done in presence of witnesses who were also examined. The primary crux of the challenge is based on the manner of affixation of notice in case the same is not been able to be served.

4. By referring to Section 3 (5) (f) of the Foreigners (Tribunal) Order, 1964, the learned counsel has submitted that when the place of residence could not be ascertained, the copy of the notice has to be affixed on the outer door or some other conspicuous part of the house, of the proceedee, where he or she ordinarily resides or last resided. She submits that admittedly the notice was affixed in the Office of the Gaon Panchayat, which will not meet the requirements of the aforesaid provision of law.

5. The learned counsel has also drawn the attention of this Court to the averments made in paragraph 5, wherein it has been stated that recently the petitioner could learn about the aforesaid order, where after steps were taken to collect necessary documents to present this petition.

6. *Per contra*, Mr. J. Payeng, the learned Standing Counsel, Home

Department has submitted that irrespective of the issue that the opinion in question is an ex-parte one, there is an unexplained delay from the date of receipt of the certified copy of the opinion and filing of the present petition. The learned Standing Counsel has however, candidly admitted that the manner in which, the notice was affixed may not be in strict conformity with the requirements of Section 3 (5) (f) of the Foreigners (Tribunal) Order, 1964.

7. At the same time, he submits that since the notice was affixed in the Office of the Gaon Panchayat, there was substantial compliance on the aspect of service of notice.

8. Mr. H. Kuli, learned counsel appearing on behalf of the Election Commission of India endorses the submissions made by Mr. J. Payeng, the learned Standing Counsel, Home Department.

9. The rival submissions have been duly considered.

10. There is no manner of dispute that the opinion under challenge is an ex-parte one. The opinion records that since the residence of the proceedee was not found, the notice was affixed in the notice board of the concerned Gaon Panchayat, which was also approved.

11. Section 3 (5) (f) of the Foreigners (Tribunal) Order, 1964 reads as follows:

“if the proceedee has changed the place of residence or place of work, without intimation to the investigating agency, the process server shall affix a copy of the notice on the outer door or some other conspicuous part of the house in which the proceedee ordinarily resides or last resided or reportedly resided or personally worked for gain or carries on business, and shall return the original to the Foreigners Tribunal from which it was issued with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did do, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy

was affixed”

12. The aforesaid provision requires affixation of a copy of the notice on the outer door or some other conspicuous part of the house in which the proceedee ordinarily resides or last resided or reportedly resided or personally work for gain or carries on business. The aforesaid provision has made ample scope for service of notice in a case, where the proceedee has changed the place of residence or place of work without intimation. Affixation of the notice in the Office of the Gaon Panchayat or for that matter in any other place may not fulfill the requirement of the aforesaid provision of law.

13. As regards the delay in presenting the petition, which was done on 24.09.2024 juxtaposed with the fact of receipt of the certified copy of the impugned opinion on 03.06.2024 has also been considered. The petitioner has annexed certain other documents including voters list, which were applied for and one of the voters list is dated 22.08.2024.

14. Though, this Court in exercising powers under Article 226 of the Constitution of India is a Court of equity, wherein the conduct of the party approaching this Court is of paramount importance, considering the entire issue in a holistic manner, we are of the opinion that interest of justice would require remanding the matter for a fresh consideration by giving opportunity to the petitioner to present her case.

15. Accordingly, the instant petition is allowed by directing the petitioner to appear before the concerned Foreigners' Tribunal No. 4, Darrang on or before 16.12.2024 by filing her written statement along with list of witnesses.

16. On such filing, the learned Tribunal will consider the case and make an endeavor to dispose of the matter expeditiously.

17. On the issue of delay in approaching this Court against an opinion of the

year 2017 and in spite of the fact of receiving the certified copy of the impugned opinion on 03.06.2024, this Court imposes a token cost of Rs. 5,000/- (Rupees Five Thousand) only to be deposited in favour of the Gauhati High Court, Bar Association Welfare Fund.

JUDGE

JUDGE

Comparing Assistant