

GAHC010208222024



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

Case No. : WP(C)/5721/2024

MUSSTT. ALEKJAN NESSA @ ALEKJAN NESSA
D/O- LATE OWAHED KHAN,
W/O- BABUL HUSSAIN
R/O- DIMAPUR, P.O.- KALGACHIA,
MOUZA- RUPSHI, P.S.- KALGACHIA,
DISTRICT- BARPETA, ASSAM,
PIN- 781319.

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY SECRETARY TO THE GOVT. OF INDIA,
THE MINISTRY OF HOME AFFAIRS,
NEW DELHI.

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

HOME DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DIRECTOR GENERAL OF POLICE (ADMN.)
ASSAM
ULUBARI
GUWAHATI-7.

4:THE SUPERINTENDENT OF POLICE (B) BARPETA
P.O. AND DIST. - BARPETA
ASSAM.

5:THE DEPUTY COMMISSIONER
BARPETA
P.O. AND P.S.- BARPETA
ASSAM.

6:THE ELECTION COMMISSION OF INDIA
NEW DELHI-1.

7:THE DISTRICT ELECTION OFFICER
BARPETA
P.O. AND DIST.- BARPETA
ASSAM.

8:THE STATE CO-ORDINATOR
NRC ASSAM
ACHYUT PLAZA
BHANGAGARH
GUWAHATI-5

Advocate for the Petitioner : MR. K MIRA, MR. A S ALI,MR. S A B KHABIR,MR S HUSSAIN

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

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

ORDER

18.11.2024

(K.R. Surana, J)

Heard Mr. K. Mira, learned counsel for the petitioner. Also heard Mr. B. Deka, learned CGC representing respondent no.1; Ms. A. Verma, learned Standing Counsel for the Home Department and FT matters representing respondent nos. 2, 3 and 4; Mr. P. Sarmah, learned Senior Govt. Advocate representing respondent nos. 5 and 7; Ms. P. Baruah, learned Standing Counsel representing respondent no. 6. There is no representation from respondent

no.8.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the *ex-parte* opinion dated 27.05.2024, passed by the learned Member, Foreigners' Tribunal, 11th, Barpeta, in F.T Case No. (Bpt/11th) F.T. 1716/2017 (arising out of reference No. P.E. No. IM(D)T. 2771/2001), declaring the petitioner as a foreigner, who has entered India illegally after 25.03.1971.

3. The learned counsel for the petitioner has submitted that the notice of the proceedings was duly served on the son of the petitioner, but the petitioner and her husband contacted one Faruk Khan, who had identified himself as Secretary of "D Voter Mancha" who state that he would take care of the case and bona fide believing him, the petitioner did not take steps in the proceedings and she was declared to be a foreigner of post 25.03.1971 stream.

4. The learned Standing Counsel for the Home Department and FT matters has opposed the prayer of the petitioner on the ground that the notice of the proceedings was duly served on the son of the petitioner and as the petitioner did not appear before the learned Tribunal despite service of notice, no ground is made out for interference with the impugned opinion, though *ex-parte*.

5. The explanation tendered by the petitioner for non-appearance before the learned Foreigners' Tribunal is not acceptable because the petitioner had approached the person who is not an Advocate, any other person who is not an Advocate, is not competent to either give advice or take steps in a quashi

judicial proceedings. Therefore, the petitioner has approached a private person at her own risk.

6. Nonetheless, as the issue of citizenship of the petitioner is at stake, the Court is reluctantly allowing this writ petition on condition of payment of cost to be indicated hereinafter and the application is conditionally allowed.

7. As a condition for interference and setting aside of the impugned opinion dated 27.05.2024, passed by the learned Member, Foreigners' Tribunal, 11th, Barpeta, in F.T Case No. (Bpt/11th) F.T. 1716/2017 (arising out of reference No. P.E. No. IM(D)T. 2771/2001), are as follows:

- a) The petitioner shall deposit cost of Rs.5000/- (Rupees five thousand only) before the Secretary, District Legal Services Authority, Barpeta, Sorbhog within 7 (seven) days from the date of the order.
- b) Thereafter, along with the acknowledgment of the receipt of the said cost, the petitioner shall appear before the Superintendent of Police (Border), Barpeta, Sorbhog within 4 (four) working days and furnish a bail bond of Rs.5000/- (Rupees five thousand only) with one solvent surety of the like amount to the satisfaction of the said authority.
- c) On furnishing of the bail bond, the Superintendent of Police (Border), Barpeta, Sorbhog shall obtain the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner and usual undertaking to appear before the Tribunal.

d) The said authority shall also obtain necessary information and documentation as required under the Rules from the applicant for securing her presence.

e) On failure of the petitioner to appear before the Superintendent of Police (Border), Barpeta, Sorbhog within the time allowed, the order of bail shall stand lapsed by efflux of time.

8. Thereafter, the petitioner shall appear before the Foreigners' Tribunal, 11th, Barpeta on or before 06.12.2024 and by providing a certified copy of this order, shall seek further directions from the said learned Tribunal.

9. Accordingly, the condition as aforesaid, the *ex-parte* opinion dated 27.05.2024, passed by the learned Member, Foreigners' Tribunal, 11th, Barpeta in F.T Case No. (Bpt/11th) F.T. 1716/2017 (arising out of reference No. P.E. No. IM(D)T. 2771/2001), is set aside.

10. On release of petitioner on bail, she is prohibited from leaving the territorial jurisdiction of the Superintendent of Police (Border), Barpeta, Sorbhog without prior written intimation.

11. It is made clear that, if the conditions imposed herein are not complied with and if the petitioner does not appear before the said learned Tribunal within the time allowed, this order would lapse and stand revoked by efflux of time and the impugned opinion shall become operative and in force.

12. On appearance of the petitioner before the said Tribunal, an opportunity shall be granted to the petitioner to file her written statement along with documents as well as evidence-on-affidavit and produce her other witnesses in a time bound manner. Thereafter, a fresh opinion shall be passed by the said learned Tribunal in accordance with law.

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

JUDGE

JUDGE

Comparing Assistant