

GAHC010210782019



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

Case No. : WP(C)/6571/2019

ARCHANA GHOSH
D/O- NARAYAN GHOSH, W/O- MONOJ KR. GHOSH, R/O- GHOSHPARA,
WARD NO.5, P.O. BILASIPARA, P.S. BILASIPARA, DIST- DHUBRI, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECY. TO THE GOVT.OF INDIA, MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001

2:THE STATE OF ASSAM
REP. BY THE SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

3:THE DY. COMMISSIONER
DHUBRI
ASSAM

4:THE SUPERINTENDENT OF POLICE (B)
DHUBRI
ASSAM

5:ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-1

6:STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS (NRC)
ASSAM
ACHYUT PLAZA

BHARALUPAR
BHANGAGARH
GHY-

Advocate for the Petitioner : MR. A BHATTACHARYA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 18/07/2024
Suman Shyam, J

Heard Mr. A. Bhattacharya, learned counsel for the writ petitioner. We have also heard Mr. R.K. D. Choudhury, learned DSGI, appearing for the respondent no.1, Mr. P. Payeng, learned Standing Counsel, Home Department & FT, Assam, appearing for the respondent nos. 2 & 4, Mr. R. Talukdar, learned Government Advocate, Assam, appearing for the respondent no. 3 and Mr. A. I. Ali, learned Standing Counsel, ECI, appearing for the respondent no. 5.

In this writ petition, the ex-parte order dated 10/06/2008 passed by the learned Member, Foreigners Tribunal (2nd) Dhubri, in connection with FT Case No. 48/BLP/06, declaring the petitioner to be a foreigner has been put under challenge.

It appears from the record that despite receipt of notice sent by the Foreigners Tribunal, the petitioner had failed to appear and contest the reference case so as to establish her nationality. It is under such compelling circumstances, the learned Member, Foreigners Tribunal had passed the impugned order dated 10/06/2008 declaring the petitioner to be a foreigner.

Mr. Bhattacharyya, learned counsel for the petitioner has submitted that the father of the petitioner, viz. Narayan Chandra Ghosh has already been declared to be an Indian national by the order dated 24/05/2016 passed by the Foreigners Tribunal No.1, Bongaigaon, in connection with

BNGN/FT/Case No. 1637/2007. The reasons as to why the petitioner could not appear before the learned Tribunal is on account of the facts that she was not aware of the consequence of the reference proceedings. That apart, after her marriage, the petitioner had shifted from Bongaigaon to Bilasipara, Dhubri, resulting in dislocation of certain documents, preventing her from taking proper steps in the matter.

In order to verify the claim of the petitioner, this Court had called for the LCR pertaining to both the FT cases, viz. FT case no. BNGN/FT/Case No. 1637/2007 as well as FT Case No. 48/BLP/06.

The LCRs have been received. We have perused the same.

On perusal of the LCR in connection with FT case No. BNGN/FT/Case No. 1637/2007, we find that the learned Foreigners Tribunal No.1, Bongaigaon, had declared the father of the petitioner to be an Indian national by taking note of the documentary evidence including the voters' list of 1966. In the present case, the petitioner has been declared to be a foreigner only on account of default on her part due to her failure to appear before the learned Tribunal and produce relevant documents. After going through the materials available on record, we are of the view that such conduct of the petitioner is wholly unacceptable and, therefore, cannot be countenance by the Court. Viewed from that angle, we do not find any infirmity in the impugned order passed by the learned Foreigners Tribunal. However, taking note of the peculiar facts and circumstances of the case, more particularly, the fact that the father of the petitioner has already been declared to be an Indian National and having regard to the consequences that may ensue upon the petitioner, if she is denied an opportunity to establish her nationality, purely, for the ends of justice, we are inclined to grant one final opportunity to the petitioner to establish her claim of citizenship before the learned Tribunal.

Learned counsel for the respondents have also fairly submitted that they would have no objection if one opportunity is granted to the petitioner to establish her claim before the learned Foreigners Tribunal.

Facilitating the above, we set aside the impugned opinion dated 10/06/2008 passed by the learned Member, Foreigners Tribunal, Dhubri. The petitioner is granted 60(sixty) days time with effect from today to appear before the learned Tribunal and file her written statement along with supporting documents and also to produce a certified copy of this order.

If the petitioner submits her written statement in terms of the leave granted by this Court, the same may be taken on record in the original case record and the reference case be decided afresh on merit.

We, however, make it clear that if the petitioner fails to file her written statement as per the leave granted by this Court along with all supporting documents within 60 days from today, in that event, the order dated 10/06/2008 will automatically revived and all legal consequences thereof will ensue upon the petitioner, without any further order from this Court.

With the above observation, this writ petition stands disposed of.

Registry to send back the LCRs, as expeditiously as possible.

JUDGE

JUDGE

sukhamay

Comparing Assistant