

GAHC010216422018



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

Case No. : WP(C)/6811/2018

NALBHANU BIBI @ LAL BHANU @ LALABHANU BIBI
W/O- MD. BASIR SHEIKH, D/O- LATE GADU KHA, VILL- TUKURA PT-III, P.S-
AGIA, DIST- GOALPARA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, NEW DELHI- 01

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

3:THE ELECTION COMMISSIONER OF INDIA
THROUGH ITS SECRETARY
NIRVACHAN SADAN
NEW DELHI- 01

4:THE STATE COORDINATOR
NRC
ASSAM
BHANGAGARH
GUWAHATI- 5

5:THE DEPUTY COMMISSIONER
GOALPARA
P.O AND DIST- GOALPARA
ASSAM

6:THE SUPERINTENDENT OF POLICE(B)

GOALPARA
P.O AND P.S- GOALPARA
DIST- GOALPARA
ASSA

Advocate for the Petitioner : MR. S NATH, MR M SHELMIM,MR. H A AHMED

Advocate for the Respondent : ASSTT.S.G.I., SC, NRC,SC, F.T,SC, ELECTION COMMISSION.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

03.12.2024

(K.R. Surana, J)

Heard, Mr. S. Nath, learned counsel for the petitioner. Also heard Ms. K. Phukan, learned CGC, appearing for the respondent No. 1; Ms. A. Verma, learned Standing Counsel for the FT matters representing respondent nos. 2 and 6; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A. I. Ali, learned Standing Counsel for ECI representing respondent no.3; Mr. G. Sharma, learned Standing Counsel for the Home Department representing respondent no.4 and Mr. R. Talukdar, learned Govt. Advocate representing respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 10.04.2018, passed by the learned Member, Foreigner's Tribunal No.1, Goalpara in F.T. Case No.7476/G/16 (arising out of Reference Dist. Case No. 304/2001), declaring the petitioner as a foreigner, who has entered India illegally after 25.03.1971.

3. We have carefully perused the records requisitioned from the learned Tribunal. It is seen that pursuant to order dated 29.01.2018, the petitioner had entered appearance before the learned Tribunal on 15.02.2018 and on 15.02.2018 and 27.02.2018, the petitioner had prayed for some more time to file written statement, which was allowed. On 06.03.2018, the written statement of the petitioner was submitted. On the next date fixed, i.e. 19.03.2018, the petitioner had filed evidence-on-affidavit of 3 (three) DWs including herself and the next date of the proceedings was fixed on 26.03.2018. However, on 26.03.2018, prayer for adjournment was made on behalf of the petitioner as the son of DW-2, who is the projected brother of the petitioner, had died and accordingly, the matter was adjourned and fixed on 06.04.2018 for cross-examination of the DWs. On 06.04.2018, the date fixed for the proceedings, the learned Tribunal has recorded in the order-sheet that the order is ready and pronounced.

4. On a perusal of the records, it appears that at the last back page of evidence-on-affidavit of DW-1 i.e. the petitioner as well in the last back page of the evidence-on-affidavit of DW-2, namely, Md. Rahijuddin, cross-examination of these 2 (two) witnesses are found recorded. The order-sheet does not reveal the presence of the Pleader for the Central Govt. or State's Govt. Pleader or the Assistant Govt. Pleader on 19.03.2018, 26.03.2018 or 06.04.2018. Moreover, the date on which the cross-examination was recorded is neither mentioned in the sheet where the cross-examination is recorded nor such cross-examination is entered in the order sheet.

5. In the impugned opinion, the learned Tribunal has recorded in paragraph 3 thereof, as follows :

In support of respondent's claim, she has examined herself as DW-1, her younger brother Rohijuddin as DW-2, younger brother Tohijuddin as DW-3 and submitted some documents. DW-1 and DW-2 were cross examined on behalf of the Union of India but declined to cross examine DW-3. I have heard argument for both sides.

6. At this stage, it is deemed appropriate to quote the order sheet of 26.03.2018, 06.04.2018 and 19.03.2018 :

19.03.2018 - Respondent present. Filed evidence-in-chief of 3 DWs with original documents.

Fix 26.03.2018 for xxx

* * *

26.03.2018 - O.P with her witness are absent. Ptn. No. 906 is filed stating the reason that grandson of DW 2 died today, but name of the grandson has not be mention. It is also submitted that OP, DW 1 and DW 2 are of same family and hence they all could not appear.

For ends of justice, case is adjourned today on condition that death certificate has to be submitted on the next date, else necessary order will be pass.

Fix 06.04.2018 for xxx

* * *

06.04.2018 – O.P is represented.

Order is ready and pronounced today.

The reference is answered into affirmative in declaring Must. Nalbhanu Bibi, wife of Basir SK of village Tukura Pt III, P.S & Dist. Goalpara, Assam is an illegal migrant of Post 1971 stream. Hence, she is liable to be deported from the Territory of India within an earlier date. ERO, 37, Goalpara East LAC is directed to delete the name of the respondent Must. Nalbhanu Bibi, wife of Basir SK of village Tukura Pt III, P.S & Dist. Goalpara, Assam under the said constituency. Her electors photo identity card, vide no. BYK128Y646 is hereby cancelled. Inform Superintendent of Police (B), Goalpara, to take necessary action to deport the respondent from the Territory of India.

7. Therefore, the observations of the learned Tribunal, which is made in paragraph 3 of the impugned opinion is found to be contrary to the contents of the said order dated 26.03.2018, which is extracted herein above.

8. Accordingly, in the unhesitant opinion of the Court, the manner in which the Tribunal has rendered its opinion dated 06.04.2018, is found to be contrary to the well established principles of natural justice. When a Tribunal is rendering an opinion, it is acting as a quasi-judicial body and it is incumbent upon the learned Tribunal to dispense justice in an appropriate manner and in accordance with law. Such an exercise must also be reflected in the order sheet.

9. Therefore, if an opinion is already prepared on 06.04.2018, the day when the matter is fixed for cross-examination, it exposes the pre-meditated mind of the learned Tribunal in dealing in the issue of citizenship, because no opportunity of being heard was provided to the petitioner. Moreover, if the order was prepared on 06.04.2018, there is no reason assigned why the opinion is dated 10.04.2018.

10. Under the scheme of the Foreigners (Tribunals) Order, 1964, such a procedure, as adopted by the learned Member, Foreigner's Tribunal No.1, Goalpara is not envisaged. Therefore, in view of the manner in which the opinion was rendered, the Court is inclined to set aside and quash the opinion dated 10.04.2018, passed by the learned Member, Foreigner's Tribunal No.1, Goalpara in F.T. Case No.7476/G/16 (arising out of Reference Dist. Case No. 304/2001).

11. The matter is remanded back for a fresh decision by the learned Tribunal by affording reasonable opportunity to the petitioner and her witnesses of being cross-examined in the presence of her counsel. The cross-examination shall be done by the Govt. Pleader or the Assistant Govt. Pleader appointed by the State and/or by the Union of India, if at all the Union of India has participated in any manner in the said proceeding. If the examination of the petitioner and witnesses are desired by the learned Tribunal by putting Court questions, it shall record such examination to be a Court question and not as a cross-examination of the witnesses.

12. In view of the manner in which the Tribunal has exercised its power and jurisdiction in the present case, the Court is inclined to sent a copy of this order to the Commissioner and Secretary to the Govt. of Assam, Home and Political (B) Department to take a call as to whether an inquiry should be ordered and/or conducted to examine the manner in which the proceedings are conducted by the Foreigner's Tribunal. The manner in which the opinion was rendered, also requires the Government of Assam to examine whether the State

is contemplating to conduct regular training programme of the various Members of the Foreigner's Tribunal as well as the for the Govt. Pleader or the Assistant Govt. Pleader, assigned to assist the Tribunal. In this regard, the Court leaves it to the wisdom of the State Government to do whatever is necessary to ensure that such practices are not repeated in future as it would tend to erode the confidence of the people as to the manner of the adjudication is being conducted in the Foreigner's Tribunal in the State.

13. Let a copy of this order be provided to the learned Standing Counsel for the FT matters for onward transmission to the Home Department of the State.

14. In order to compel the petitioner to appear before the learned Tribunal, the petitioner, namely, Nalbhanu Bibi @ Lal Bhanu @ Lalabhanu Bibi shall appear before the Superintendent of Police (Border), Goalpara on or before 20.12.2024 and shall furnish a bail bond of Rs.5,000/- (Rupees five thousand only) with one local surety of the like amount to the satisfaction of the said authority. Further, the Superintendent of Police (Border), Goalpara is directed that on appearance of the petitioner within the period indicated above, the biometrics of the iris of both eyes, the fingerprints of both hands and the photographs of the petitioner shall be obtained, whereafter, she shall be allowed to remain on bail.

15. The petitioner shall appear before the learned Member, Foreigner's Tribunal No.1, Goalpara on or before 08.01.2025 and by producing a certified

copy of this order, await for further directions from the said learned Tribunal.

16. In the event the petitioner does not appear before the learned Member, Foreigner's Tribunal No.1, Goalpara, it would be open to the learned Tribunal to pass appropriate orders for her production and participation in the proceedings.

17. The records of the learned Tribunal be sent back expeditiously.

18. Before parting with the record, we would like to put on record that the learned counsel for the petitioner has not rendered any assistance to the Court and has appeared unprepared and had not even perused the record of the Tribunal before addressing the Court.

JUDGE

JUDGE

Comparing Assistant