

GAHC010264442018



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

Case No. : WP(C)/8402/2018

KHYAMA DUTTA @ KHAMA DUTTA @ KHYAMA RANI DAS
D/O LATE PRIYANATH DAS AND W/O- SUJIT DUTTA, R/O. KALYANPUR, P.S.
SILAPATHAR, DISTRICT- DHEMAJI (ASSAM). PIN- 787059.

VERSUS

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

2:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
HOME DEPTT. AND POLITICAL DEPTT.
DISPUR
GUWAHATI-6.

3:THE ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI- 110001.

4:STATE COORDINATOR OF NATIONAL REGISTRAR OF CITIZENSHIP (NRC)
ASSAM
BHANGAGARH
GUWAHATI-5
DIST. KAMRUP (ASSAM)
PIN- 781005

5:THE DEPUTY COMMISSIONER
DHEMAJI
P.O. AND P.S. DHEMANI
(ASSAM)
PIN- 787057.

6:THE SUPERINTENDENT OF POLICE (BORDER)
DHEMAJI
DIST. DHEMAJI (ASSAM). PIN- 787057

Advocate for the Petitioner : MR. B CHETRI

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

15-05-2024

(M.R.Pathak, J)

Heard Mr. B. Chetri, learned counsel for the petitioner and Mr. G. Sarma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2 and 6. Also heard Mr. H. Kuli, learned Standing Counsel, Election Commission of India for the respondent No. 3 as well as Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No.5.

2) Dissatisfied with the impugned order/opinion dated 02.04.2018, passed by the learned Member, Foreigners Tribunal, 2nd Dhemaji at Silapathar in F.T.(D) Case No.2nd Dhemaji - 265/2016 opining her to be a foreigner under the Foreigners Act, 1946 of post 25.03.1971 granting protection under the Immigrants (Expulsion from Assam) Act, 1950 in pursuance of the Notification dated 07.09.2015 of the Government of India in the Ministry of Home Affairs, the petitioner has filed this writ petition on 28.11.2018.

- 3)** The Court by its order dated 20.12.2018 called for the records of said F.T.(D) Case No. 2nd Dhemaji-265/2016 from the learned Foreigners Tribunal, 2nd Dhemaji at Silapathar and in the interim, granted protection to the petitioner that she shall not be detained and deported from the territory of India, which is still in force.
- 4)** We have perused the records of said F.T.(D) Case No.2nd Dhemaji - 265/2016 that was called for by the Court earlier.
- 5)** From the records of the case, we have seen that during the revision of electoral rolls for the 114 Jonai (ST) Assembly Constituency in Assam with reference to 01.01.2005, the concerned Electoral Registration Officer (ERO) on consideration and on the report of the Local Verification Officer (LVO), found the petitioner to be a doubtful voter and forwarded the matter to the Superintendent of Police (Border), Dhemaji requesting the competent authority to refer the said matter to the Tribunal constituted under the Foreigners Act, 1946 and the Rules framed there-under to determine as to whether the petitioner is a foreigner or not.
- 6)** Pursuant to the same, the Superintendent of Police (Border), Dhemaji by its communication dated 21.11.2007 referred the said matter to the Member, Foreigners Tribunal, Dhemaji, to determine the nationality/citizenship of the petitioner.
- 7)** On receipt of the said reference from the Superintendent of Police (Border), Dhemaji, F.T.(D) Case No.2nd Dhemaji - 265/2016 was registered before the Foreigners Tribunal, 2nd, Dhemaji and the said Tribunal on 16.10.2017 issued notice to the petitioner fixing the case on 25.10.2017.

8) On receipt of notice of said F.T.(D) Case No.2nd Dhemaji - 265/2016, the petitioner on 25.10.2017 appeared before the said Tribunal and obtained bail. Subsequently, on 31.10.2017, the petitioner filed her Written Statement in said F.T.(D) Case No.2nd Dhemaji - 265/2016 before the said Tribunal and on 09.11.2017, she filed her written Evidence-in-Affidavit in the said case.

9) In her Written Statement as well as in her written Evidence-in-Affidavit, before the Tribunal the petitioner stated that late Priyanath Das and Smti. Usha Rani Das are her parents, she was born at village - Matikhola under Dhemaji Police Station of undivided Lakhimpur district and that her father came to Assam (India) from East Pakistan due to religious persecution and settled at undivided Lakhimpur district. It is also stated that after settling down at village Matikhola of Dhemaji Mouza in the undivided district of Lakhimpur, her father in the year 1965 was allotted with a parcel of land at Dag No. 429/533 of Patta No. 104/66 in Matikhola village itself and in that regard, the petitioner placed a photocopy of Patta of said land issued in the name of her projected father. She also stated that in the year 1979 she along with her parents shifted from Matikhola village of Dhemaji Mouza of undivided district of Lakhimpur and settled at Society village under Silapathar Police Station, Dhemaji Mouza of the then District - Lakhimpur, now, District - Dhemaji.

10) She further stated that her name along with the names of her mother and elder sister figured in the Voters' List of 1985 pertaining to No. 114 Jonai Legislative Assembly Constituency from village Silapathar Society. To that extent, the petitioner submitted a photocopy of certified copy of Voters' List of 1985 before the said Tribunal.

11) In her Written Statement as well as in written Evidence-in-Affidavit, the

petitioner stated before the Tribunal that in the year 1986 on attaining the age of 22 years, she was married to Sri Sujit Dutta of village Kalyanpur under Silapathar Police Station and that she read upto Class-IX at Akajan High School of Silapathar, District - Dhemaji upto 1984. In that regard, she submitted a photostat copy of the Transfer Certificate dated 12.08.2007, issued by the Headmaster of said Akajan High School.

12) In her Written Statement as well as in written Evidence-in-Affidavit, the petitioner stated before the Tribunal that in the case, if she somehow, fails to prove her nationality, she being a Hindu, her case should be considered as per the Notification dated 07.09.2015 of the Government of India in the Ministry of Home Affairs and as per the provisions of the Immigrants (Expulsion from Assam) Act, 1950.

13) The Tribunal by its impugned order/opinion dated 02.04.2018 after considering her Written Statement, Evidence-in-Affidavit as well as the exhibits of Annual Patta pertaining to her projected father; the Voters' List of 1985 of 114 Jonai LAC and her School Transfer Certificate which reflects that she is the daughter of late Priyanath Das, inhabitant of village - Society, Silapathar, District-Dhemaji, Assam and her date of birth is 03.06.1969 which were adduced by her, the Tribunal came to the conclusion that the petitioner failed to establish that she is the daughter of late Priyanath Das and that she is an Indian citizen. Accordingly, the Tribunal opined her to be a foreigner of post 25.03.1971 granting protection to her under the Immigrants (Expulsion from Assam) Act, 1950 in terms of the Notification dated 07.09.2015 of the Government of India in the Ministry of Home Affairs.

14) From the impugned order/opinion dated 02.04.2018, we have seen that the Tribunal did not discuss the evidence adduced by the petitioner in the

impugned order dated 02.04.2018 and without discussing the evidence in detail pertaining to their acceptance or rejection with reasons that were adduced by the petitioner, passed the impugned opinion dated 02.04.2018 opining her to be a foreigner of post 25.03.1971.

15) The Tribunal constituted under the Foreigners Act, 1946 as well as Foreigners (Tribunals) Order, 1964 is a quasi-judicial authority and while giving its opinion, as to whether the proceedee is a foreigner or not, in its opinion is required to discuss in detail as to why it came to the findings or conclusion relating to its opinion.

16) From the impugned opinion dated 02.04.2018, we found that while rejecting the case of the petitioner, the Tribunal did not discuss the evidence adduced by her and merely arrived to the conclusion that the petitioner failed to establish her case as required under Section 9 of the Foreigners Act, 1946.

17) It is well settled that — *the administrative authority and Tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastisement. Thus it will not be far from an absolute principle of law that the Courts should record reasons for their conclusion to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate Court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law or whether it has adopted the correct legal approach. To subserve the purpose of justice delivery system, therefore it is essential that the Courts should record reasons for their conclusions, whether disposing of the case at admission stage or after regular hearing [(2010) 4 SCC*

785 (*Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers*)]].

18) In the case of *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney* reported in (2009) 4 SCC 240 the Hon'ble Supreme Court have held that — *the purpose of disclosure of reasons as held by Constitution Bench in the case of S. N. Mukherjee Vs. Union of India reported in (1994) 4 SCC 594 is that people must have confidence in the judicial or quasi judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises chances of arbitrariness, hence it is essential requirement of the rule of law that some reasons, atleast in brief must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation.*

19) In the case of *State of Uttaranchal and Another Vs. Sunil Kumar Vaish and Others*, reported in (2011) 8 SCC 670 the Hon'ble Supreme Court have held that — *Judicial decisions must in principle be reasoned and the quality of a judicial decisions depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the Judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.*

20) In the case in hand we have seen that the Tribunal while passing the impugned order did not discuss the evidence adduced by the petitioner and

gave any reasons in discarding them. It has to discuss the evidence on record and give his own reasons. It is immaterial whether the reasons are sound or wrong. As such, on account of basic omission of discussing the evidence and reasons, the impugned order becomes bad in law.

21) In view of the above, as we are of the opinion that the impugned opinion dated 02.04.2018 is not tenable in law, we accordingly set aside and quash the said opinion/order dated 02.04.2018, passed by the learned Foreigners Tribunal, 2nd Dhemaji at Silapathar in F.T.(D) Case No.2nd Dhemaji - 265/2016 and remand the matter back to the said Tribunal, directing it to pass a fresh order, on consideration of the evidence already adduced by the petitioner.

22) The petitioner shall appear before the Foreigners Tribunal, 2nd, Dhemaji at Silapathar **on or before 12.06.2024** along with a certified copy of this order.

23) The interim order passed earlier on 20.12.2018 in this proceeding stands merged with this order.

24) The Registry shall return the records of F.T.(D) Case No.2nd Dhemaji - 265/2016 forthwith to the learned Foreigners Tribunal, 2nd Dhemaji at Silapathar along with a copy of this order.

25) It is made clear in the event the petitioner does not appear before the Tribunal on 12.06.2024 or thereafter, on the dates fixed by it, even then, the Tribunal shall dispose of the matter available before it in accordance with law and the provisions of the Foreigners Act, 1946 as well as the Foreigners (Tribunals) Order, 1964.

26) Since this order has been passed in presence of the learned counsels for

the parties, the Foreigners Tribunal, 2nd Dhemaji at Silapathar need not issue any fresh notice to the petitioner with regard to the said F.T.(D) Case No.2nd Dhemaji - 265/2016.

27) With the above observations and direction, this writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant