

GAHC010285122023



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

Case No. : I.A.(Civil)/3817/2023

AYMONA KHATUN
D/O- HASEN KHA, W/O- MAYEZ UDDIN, R/O- BALABHITA, P.S. BARPETA
ROAD, DIST- BARPETA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
THROUGH THE SECRETARY, TO THE GOVT. OF INDIA, MINISTRY OF
HOME AFFAIRS, GRIHA MANTRALAYA, NEW DELHI

2:THE STATE OF ASSAM
THROUGH THE SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

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

4:THE STATE CO-ORDINATOR
NATIONAL REGISTRATION OF CITIZEN
ASSAM
BHANGAGARH
GHY-5

5:THE DY. COMMISSIONER
BARPETA
P.O. AND DIST- BARPETA
ASSAM

PIN- 781301

6:THE SUPERINTENDENT OF POLICE (B)
BARPETA
P.O. AND DIST- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MR. S C BISWAS

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

O R D E R

16.02.2024

(S.K. Medhi, J)

Heard Mr. F.A. Hasan, learned counsel appearing for the applicant/writ petitioner, Ms. A. Verma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2 and 6, 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. The applicant as petitioner had filed the connected writ petition being WP(C) No.6538/2019, challenging the opinion dated 29.09.2018 passed by the learned Member, Foreigners' Tribunal 8th, Barpeta in F.T. Case No.190/2017. The said writ petition was disposed of vide an order dated 24.07.2023, whereby the matter was remanded for appreciation of the evidence of DW-2 with some further observations. For the sake of clarity, the relevant part of the order dated 24.07.2023 is extracted herein below:-

“5. In view of the above, we remand the matter back to the Tribunal for

appreciation of the evidence of DW-2. The Tribunal may require the re-appearance of the DW-2 before the Tribunal for further cross examination by the State through the Home Department. The Tribunal shall also verify and satisfy itself whether the person appearing before the Tribunal as DW-2 is actually Hasen Kha son of Halim of the voters list of 1965 of village Sukhmanah. After doing the needful, the Tribunal shall pass a reasoned order thereon."

3. The order also made the following observations:-

"6. If the reasoned order is in favour of the petitioner, the same shall prevail over the earlier opinion dated 29.09.2018 and if it goes against the petitioner, consequence as per law shall follow.

7. The petitioners shall appear before the concerned Foreigners Tribunal on 17.08.2023. Till the reasoned order is passed, no coercive action be taken against the petitioner."

4. Mr. F.A. Hasan, learned counsel for the applicant has submitted that DW-2, the projected father of the applicant has expired and therefore, the order dated 24.07.2023 is required to be modified with a further prayer of allowing other competent witnesses to be examined by the Tribunal.

5. Ms. A. Verma, learned Standing Counsel, Home Department, Assam, however, submits that the date of expiry of the projected father of the applicant/writ petitioner has not been stated. She further points out that though vide the order dated 24.07.2023, the date for appearance was fixed on 17.08.2023, the instant application has been filed long thereafter on 18.12.2023. She also submits that the second part of the prayer would amount to a review of the earlier order, which is not the ambit and purpose of the present application.

6. The rival contentions have been considered.

7. The order dated 24.07.2023, which has been sought to be modified by this application, while remanding the matter, made it clear that the

petitioner was to appear before the concerned Tribunal on 17.08.2023. The second part of the order that till the reasoned order is passed, no coercive action be taken is obviously subject to the fulfilment of the first part of the order requiring appearance of the petitioner on 17.08.2023. We have also noticed that the primary purpose of remand was for appreciation of the evidence of DW-2 and discretion was given to the Tribunal to seek re-appearance of the DW-2 for further cross-examination. Since the evidence of DW-2 is already on record, the said evidence can be appreciated by the Tribunal in terms of the order dated 24.07.2023.

8. We are also of the opinion that since the applicant/ writ petitioner had failed to appear on the date fixed i.e. 17.08.2023, the second part of the order whereby restraint was put regarding any coercive action will not be operative. We have also noticed that though a statement has been made in paragraph-3 of the application regarding the expiry of the projected father of the applicant/writ petitioner, no date of such death has been given.

9. In view of the above, we find that there is no merit in this application and accordingly, the same is dismissed.

10. We further make it clear that there is no restraint upon the learned Tribunal to pass fresh order(s), if not already passed pursuant to the remand made by the order dated 24.07.2023 in the connected writ petition.

JUDGE

JUDGE

Comparing Assistant