

GAHC010291022023



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

Case No. : WP(C)/7519/2023

KORIMAN NESSA @ PARIMAN NESSA
W/O- MD. SALAM ALI, PERMANENT RESIDENT OF VILL.- BHAKUAMARI,
P.S. SALBARI, DIST. BAKSA, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS , NEW DELHI-110001.

2:THE ELECTION COMMISSION OF INDIA
REPRESENTED BY THE CHIEF ELECTION COMMISSIONER
NEW DELHI-110001.

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GHY-781006.

4:THE DEPUTY COMMISSIONER
BAKSA
PIN- 781343.

5:THE SUPERINTENDENT OF POLICE (B)
BAKSA
PIN- 781343
ASSAM

6:CO-ORDINATOR
NATIONAL REGISTRAR OF CITIZENS
BHANGAGARH
GHY-781005

Advocate for the Petitioner : MR A W AMAN

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

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

19.01.2024

(M Thakuria, J)

Heard Mr. A. W. Aman, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned Central Government Counsel for the respondent No. 1; Mr. A. I. Ali, learned Standing Counsel, Election Commission of India for the respondent No. 2; Ms. A. Verma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 3 and 5; as well as Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No. 4.

2. Mr. Aman, learned counsel for the petitioner, submitted that the petitioner is an Indian citizen by birth and has sufficient relevant documents to prove herself to be the Indian citizen. However, in pursuant to a reference made by the Superintendent of Police (Border), Baksa, vide S.P. Ref. Case No. 604/2010, a case has been registered before the learned Member, Foreigners' Tribunal, Baksa, Tamulpur, being F.T. Case No. 72/BAKSA/2019. Accordingly, the petitioner received the summon in the said case and appeared before the Tribunal on 10.10.2019 and on 08.11.2019 submitted her Written Statement in the matter before the Tribunal. But, thereafter, due to outbreak of Covid-19 pandemic, she was not in a position to attend the Court and also failed to file her Evidence-on-Affidavit. He also

submitted that during that period, the Tribunal was also not functioning due to direction issued by the Government as well as by this Court. However, despite the situation being normalized subsequently, the petitioner was not informed by her engaged counsel about the date fixed by the Tribunal and consequently she remained unrepresented on 25.02.2021, 18.03.2021 & 23.04.2021, the date fixed by the Tribunal. Thereafter, the record was put up on 04.09.2021 and the date was fixed for Evidence-on-Affidavit on 30.09.2021, but she was not aware about the same. In the meanwhile, as her husband felt seriously ill, she could not appear before the Tribunal on the subsequent dates about which she was neither aware of nor she was informed. As a result, the case proceeded *ex parte* against her and vide order dated 29.10.2021, the learned Member, Foreigners' Tribunal, Baksa passed the *ex parte* order/opinion dated 29.10.2021 declaring the petitioner as a foreigner of post 25.03.1971 stream.

3. It is further submitted by the learned counsel for the petitioner that the petitioner is an Indian citizen by birth and her grandfather - Innush Ali is a native born of India and his name was also enrolled in the Voters List of 1953. Apart from that, she has sufficient other documents to prove herself to be Indian citizen as required under Section 9 of the Foreigners Act, 1946. Accordingly, it is prayed that if the petitioner is allowed to contest the case or to file her Evidence-on-Affidavit along with the other relevant documents by setting aside the impugned *ex parte* order passed by the learned Member, Foreigners' Tribunal, Badka, she will be able to establish herself as an Indian citizen.

4. In this context, Ms. A. Verma, learned Standing Counsel, Home Department, has submitted that the petitioner was granted sufficient time to appear before the Tribunal and to file her Evidence-on-Affidavit along with relevant documents. The case record was put up on 04.09.2021 and thereafter also, 3-4 chances were given to her to contest the case by filing the relevant documents and in spite of such opportunities given to her, the petitioner intentionally did not appear before the learned Member, Foreigners' Tribunal, Baksa. Hence, finding no other alternative, the learned Member, Foreigners' Tribunal, Baksa had to pass the order *ex parte* declaring the present petitioner as a foreigner of post 1971 stream

considering the materials available on record. Thus, the learned Member, Foreigners' Tribunal, Baksa did not commit any error or mistake to make any interference in the impugned ex-parte order/opinion dated 29.10.2021.

5. We have heard the submissions made by the learned counsels for both sides and also have perused the record of F.T. Case No. 72/BAKSA/2019 in original.

6. From the record, it reveals that the notice was returned after service on 10.10.2019 and thereafter, the proceedee after her appearance in the matter sought time for on 3-4 occasions to file her written statement. Later, she filed her written statement in the matter before the Tribunal only on 18.03.2020 and the next date was fixed on 24.04.2020. But, due to prevailing situation of Covid-19 pandemic, the case record was put up only on 30.01.2021 and the next date for filing of Evidence-on-Affidavit was fixed on 25.02.2021. On 25.02.2021, a prayer was made on behalf of the petitioner seeking time for filing written evidence and accordingly the same was allowed fixing the next date on 18.03.2021. Thereafter 2 (two) dates were fixed on 18.03.2021 & 23.04.2021 giving chance to the petitioner for furnishing the Evidence-on-Affidavit. But again, due to Covid-19 restriction, the case record was put on 04.09.2021 fixing next date on 30.09.2021 giving chance to file her written Evidence-on-Affidavit. Thereafter 3 (three) dates were again given to the petitioner by the Tribunal for filing her Evidence-on-Affidavit, but she remained absent and finally on 29.10.2021, the *ex parte* order was passed by the Tribunal against the petitioner/proceedee declaring her as a foreigner of post 1971 stream considering the materials available on record.

7. It is a fact that there were several restrictions on functioning of the Courts and Tribunals and the Government and the High Court also issued Notifications from time to time regarding functioning of the Court proceeding with some restrictions and guidelines during the period of pandemic Covid-19. On 04.09.2021, one Notification was issued by this Court with some guideline for functioning of the Courts and Tribunal.

8. Accordingly, in the present case also, it is seen that the case record was put up on 04.09.2021 after receiving the notice from this Court. But, it is seen that no notice was

issued to the petitioner/proceedee after 04.09.2021 when the record was put up for hearing. Considering the prevailing situation of Covid-19 pandemic, it cannot be denied that the petitioner/proceedee may not be aware about the date fixed by the Tribunal and the submission made by the learned counsel for the petitioner that the petitioner was not informed by anyone in regards to the date fixed by the Tribunal also cannot outrightly be denied.

9. From the order passed by the learned Member, Foreigners' Tribunal, Baksa, it is seen that the record was put up on 04.09.2021 and immediately the next date was fixed on 30.09.2021 and there was no order in issuance of notice to the petitioner intimating the date fixed by the Tribunal.

10. In view of above and considering the submission made by the learned counsel for the petitioner and also considering the entire situation during Covid-19 pandemic and further considering the fact that no notice was issued to the petitioner/proceedee informing her about the date fixed by the Tribunal, we find that it is a fit case where the petitioner/proceedee can be given a chance to contest the case by filing her Evidence-on-Affidavit by setting aside the impugned *ex parte* order/opinion dated 29.10.2021, passed by the learned Member, Foreigners' Tribunal, Baksa in F.T. Case No. 72/BAKSA/2019 (S.P. Ref. Case No. 604/2010).

11. Considering the entire aspect of the matter and for the ends of justice, the impugned *ex parte* order/opinion dated 29.10.2021, passed by the learned Member, Foreigners' Tribunal, Baksa in F.T. Case No. 72/BAKSA/2019 (S.P. Ref. Case No. 604/2010) is hereby set aside and quashed. The matter is remanded back to the learned Member, Foreigners' Tribunal, Baksa with a direction to the petitioner to appear before the learned Member, Foreigners' Tribunal, Baksa in said F.T. Case No. 72/BAKSA/2019 on or before 08.02.2024 along with a certified copy of this order and to file her Evidence-on-Affidavit therein with relevant documents that she relies on within the said specific period of time, i.e., on or before 08.02.2024. Further, the learned Member, Foreigners' Tribunal, Baksa shall also record her evidence/cross evidence on the date of her appearance and will dispose of the

said F.T. Case No. 72/BAKSA/2019 expeditiously within the prescribed time as provided in the Foreigners' Tribunals Order, 1964.

12. It is made clear that if the petitioner fails to appear before the Foreigners' Tribunal, Baska in said F.T. Case No. 72/BAKSA/2019 on or before 08.02.2024 and also fails to file her Evidence-on-Affidavit with the relevant documents, to prove her citizenship/nationality, the said Tribunal shall be at liberty to pass necessary order in accordance with law with the materials available on record in terms of Foreigners' Tribunals Order, 1964.

13. With the above observations and directions, this writ petition accordingly stands disposed of.

14. The record of F.T. Case No. 72/BAKSA/2019 (S.P. Ref. Case No. 604/2010) be returned to Ms. A. Verma, learned Standing Counsel, Home Department, Assam obtaining necessary acknowledgement from her in that regard.

15. The Registry (Judicial) shall forthwith communicate this order to the Foreigners' Tribunal, Baksa.

JUDGE

JUDGE

Comparing Assistant