

GAHC010307222019



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

Case No. : WP(C)/360/2020

ANITA MAJUMDER
D/O- LATE RASARAJ MANDAL, VILL- SHOONSALI GHAT, P.S- NOONMATI,
DIST- KAMRUP (M), PIN- 781020

VERSUS

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

2:THE STATE OF ASSAM
TO BE REP. BY THE SECRETARY TO THE GOVT OF ASSAM
DEPTT OF HOME
DISPUR
GHY- 6

3:THE SUPERINTENDENT OF POLICE (B)
KAMRUP(M)
GUWAHATI
ASSAM

4:THE DEPUTY COMMISSIONER OF POLICE (B)
KAMRUP (M)
GUWAHATI

5:THE ELECTION COMMISSION OF INDIA
TO BE REP. BY THE CHIEF ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI
INDIA

6:THE NRC
TO BE REP. BY THE STATE COORDINATOR
ACHYUT PLAZA
BHANGAGARH
KAMRUP(M)
ASSA

Advocate for the Petitioner : MR. L R MAZUMDER

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

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of hearing & Judgment : 03.04.2024

JUDGMENT & ORDER (ORAL)

(MR Pathak, J)

Heard Mr. A.Z. Ahmed, learned counsel for the petitioner. Also heard Mr. G. Sharma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 3 & 4 as well as Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for the respondent No.5.

2. In a police Case being F.T.Case No.353/2014 registered under the Foreigners Act, 1946, police personnel from Noonmati Police Station on making an enquiry, found the petitioner to be a suspected foreigner. As such, as per the report of the concerned authority of Noonmati Police Station, after such enquiry, the Superintendent of Police (Border), Guwahati City on 19.03.2014 referred the matter to the Foreigners Tribunal, Kamrup (Metro), Guwahati under the Foreigners Act, 1946 for its opinion whether the petitioner is or is not a foreigner.

3. The said reference was placed before the Foreigners Tribunal, Kamrup (M) 3rd, Guwahati wherein it was registered as F.T. Case No. 691/2015. The petitioner on receipt of notice under the Foreigners Act, 1946 from the said Tribunal, submitted her written reply/statement before it in said F.T. Case No. 691/2015 on 10.11.2016 stating that Smti Tarulata Mandal is her mother, who is the daughter of one Late Jogesh Chandra Baishya and Late Kripabala Baishya of village Ujandubi, Police Station-

Manikpur, Gaon Panchayat -Pelengbari, Mouza-Bijni under Bijni Revenue Circle in the District of Bongaigaon, Assam. She also stated that her father was late Rasaraj Mandal. To prove her case, the petitioner exhibited the following documents before the learned Foreigners' Tribunal, Kamrup (M) 3rd, Guwahati:—

(I) Exhibit-I — NRC document of 1966 of Jogendra Chandra Baishya, son of Late Nabin Baishya of village-195 Ujandubi under Bijni Police Station, Goalpara Circle of District Bongaigaon;

(II) Exhibit-II — Voter List of 1966 pertaining to No.41 Bijni Legislative Assembly Constituency relating to Village No.195 Ujandubi, containing the name of Jogesh Chandra Baishya, aged about 50 years, son of Late Nabin Baishya and his wife Kripabala Baishya, aged about 38 years at Serial Nos.49 and 50 in the House No.33;

(III) Exhibit-III — Electoral Photo Identity Card issued on 01.10.2013 in the name of Tarulata Mandal, wife of Rasaraj Mandal of Village/Town-Sector-1 (Part), Police Station-Noonmati, Sub-Division-Guwahati, District-Kamrup (M), Assam, relating to No.52 Dispur Legislative Assembly Constituency;

(IV) Exhibit-IV — Electoral Photo Identity Card issued on 01.09.2015 in the name of Anita Mandal, Daughter of-Tarulata Mandal of Village/Town-Sector-1 (Part), Police Station-Noonmati, Sub-Division-Guwahati, District-Kamrup (M), Assam, relating to No.52 Dispur Legislative Assembly Constituency;

(V) Exhibit-V — Family Ration Card issued in the name of Tarulata Mandal, wife of Late Rasaraj Mandal of Village-Shoonsali, Ward No.46/22, Sub-Division- Guwahati, District-Kamrup(M) under No.52 Dispur Legislative Assembly Constituency, containing the name of the petitioner as one of the daughters of said Tarulata Mandal;

(VI) Exhibit-VI — Certificate of Registration under Section (5)(1)(a)/(d) of the Citizenship Act, 1955 relating to one Rash Raj Mandal, son of Narendra Chandra Mandal with No.247251, issued by Sub-Divisional Officer/Block Development Officer, Barpeta;

(VII) Exhibit-VII — A Photostat copy of Voter List of the year 1997 of village Amaypur/Kahibari, Block No.56 of Pub Baska, where the name of one Rasa Mandal, aged about 40 years, son of Krishnakanta Mandal and one Tarulata Mandal, aged about 32 years, wife of Rasa Mandal at Serial Nos.247 and 248 in the House No.77 was reflected;

(VIII) Exhibit-VII — Voter List of 2015 of No.52 Dispur Legislative Assembly Constituency showing the name of Anita Mandal, Daughter of Tarulata Mandal, aged about 34 years at Serial No.1405 in the house No.1612;

(IX) Exhibit-VIII — Voter List of 2013 No.52 Dispur Legislative Assembly Constituency showing the name of Rasaraj Mandal, son of Narandra Mandal, aged about 56 years at Serial No.334, House No.1612 Gha.

4. The petitioner/proceedee has also adduced evidence of herself as DW-1, one Jagannath Das, aged about 55 years, son of Late Bhadeswar Das, resident of village-Natun Barala, Police Station-Jalah in the district of Bongaigaon (BTAD), Assam as DW-2, one Dulal Mandal, aged about 41 years, son of Late Kamal Mandal, permanent resident of Village-Amayapur, Police Station-Tamulpur, District-Baksa (BTAD) as DW-3 and another person, namely, Jayanta Baishya, aged about 50 years, son of Late Jagadish Baishya, resident of Village-Amayapur, Police Station-Tamulpur, District-Baksa (BTAD) as DW-4.
5. On perusal of the records of said F.T. Case No. 691/2015, that was called for by the Court by order dated 26.05.2020, we have seen that the Tribunal have also examined and recorded the statements of those witnesses including the present petitioner/proceedee. Thereafter, the learned Tribunal, Kamrup 3rd, Guwahati, by the final order dated 26.08.2019, in F.T. Case No.691/2015, gave its opinion declaring the petitioner to be a foreigner under the Foreigners Act, 1946.
6. Dissatisfied with the said final order of the learned Foreigners Tribunal, Kamrup (M) 3rd, Guwahati dated 26.08.2019 passed in F.T. Case No.691/2015, the petitioner filed this writ petition.
7. On perusal of said impugned order dated 26.08.2019; it has come to our notice that the Tribunal while considering the matter did not discuss the evidence adduced by the petitioner as a proceedee in said F.T. Case No.691/2015 before it. We have also found that the Tribunal did not discuss the evidence of the witnesses adduced by the proceedee including herself as DW-1, and above named DWs - 2, 3 and 4. In the said order dated 26.08.2019 the Tribunal simply stated about the facts of the case but did not give its finding on those facts and issues and opined the petitioner to be a foreigner under the Foreigners Act, 1946.
8. Considering the same, we are of the view that the impugned final order dated 26.08.2019 passed by the learned Member, Foreigners' Tribunal, Kamrup (Metro) 3rd, Guwahati in F.T. Case No.691/2015 is not in accordance with law as the Tribunal in the said order dated 26.08.2019 did not discuss the evidences adduced by the petitioner/proceedee as well as the evidence of the three other witnesses on behalf of the petitioner as required by law, though their evidence were recorded by the said Tribunal.
9. Accordingly, the impugned final order dated 26.08.2019 passed by the learned Foreigners

Tribunal, Kamrup (Metro) 3rd, Guwahati in F.T. Case No.691/2015 being not sustainable in law, we set aside and quash the same, remanding the matter back to said Foreigners Tribunal, Kamrup (Metro) 3rd, Guwahati, directing it to pass a reasoned order afresh in the said F.T. Case No.691/2015 discussing all the evidences adduced by the petitioner/proceedee including that of DWs - 2, 3 & 4, noted above, as well as the materials exhibited before the said Tribunal by the said proceedee and/or those DWs.

10. Since the impugned final order dated 26.08.2019 passed in F.T. Case No.691/2015 is set aside and quashed, the interim protection and bail granted to the petitioner earlier in this proceeding on 26.05.2020 is hereby recalled/stands vacated.

11. The learned Foreigners Tribunal, Kamrup (M) 3rd, Guwahati shall now pass a fresh order in said F.T. Case No.691/2015 at the earliest as directed above.

12. The petitioner shall now appear before the learned Member, Foreigners' Tribunal, Kamrup (M) 3rd, Guwahati in said F.T. Case No.691/2015 along with a certified copy of this order on or before 17th May, 2024.

13. Registry shall return the records of said F.T. Case No.691/2015 to the Foreigners Tribunal, Kamrup (M) 3rd, Guwahati, Assam forthwith along with a copy of this order.

14. With the above observations and directions, the writ petition stands disposed of.

JUDGE

JUDGE

Comparing Assistant