

GAHC010001162024



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

Case No. : WP(C)/97/2024

AMBIYA BIBI @ AMBIA KHATUN @ AMRIYA KHATUN
DAUGHTER OF ABBAS ALI, WIFE OF SAMSUL HOQUE, PERMANENT
RESIDENT OF VILLAGE- POKALAGI, POST OFFICE- CHENGLIMARI,
POLICE STATION- SALBARI, DISTRICT- BAKSA, BTR (ASSAM) PIN- 784145

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT INDIA,
MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN- 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
GOVERNMENT OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI- 781006

4:THE DEPUTY COMMISSIONER
BAKSA
MUSHALPUR
781372

5:THE SUPERINTENDENT OF POLICE (B)
BAKSA
MUSHALPUR
781372

6:THE COORDINATOR
NATIONAL REGISTER OF CITIZENS
BHANGAGHAR
GUWAHATI-0

Advocate for the Petitioner : MR. J ABBAS

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

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

07-03-2024

(M.R.Pathak, J)

Heard Mr. J Abbas, learned counsel appearing for the petitioner and Ms. A Verma, learned Standing counsel, Home Department, Assam for the respondent Nos. 3 & 5. Also heard Mr. H Kuli, learned counsel appearing on behalf of Mr. A I Ali, learned Standing counsel, Election Commission of India for the respondent No. 2 as well as Mr. R Talukdar, learned Government Advocate, Assam for the respondent No. 4.

2. Perused the records of said F.T. Case No. 50/BAKSA/2019 that was called for by the Court on 10.01.2024.

3. The Superintendent of Police (Border), Baksa, Assam considering the Inquiry Report, by its communication under Memo No. DSA/B/FT/15/100 dated 30.04.2007 made a reference under Order 2 (I) (A) of the Foreigners (Tribunal) Order, 1964 to the Foreigners' Tribunal, Baksa seeking an opinion as to whether the petitioner, namely, Musstt. Ambia Bibi, wife of Md. Samsul Haque of Village-Pokalagi under Salbari Police Station, District-Baksa is a foreigner under the Foreigners Act, 1946 who came into India (Assam) after 25.03.1971 or not.

4. The said reference of the Superintendent of Police (Border), Baksa, Assam dated 30.04.2007 was accordingly registered as F.T. Case No. 50/BAKSA/2019 before the Foreigners Tribunal, Baksa, Tamulpur, wherein notice was issued on 24.10.2019 to the petitioner, fixing 21.11.2019 for service report and her appearance in the said F.T. Case.

- 5.** The Foreigners Tribunal, Baksa, Tamulpur in said F.T. Case No. 50/BAKSA/ 2019 on 21.11.2019 found that notice upon the petitioner returned with report that she refused to receive the notice of the case and accordingly the Tribunal issued notice to the concerned Process Server and the Gaonburah concerned for their examination, fixing 15.12.2019 for examination of witnesses of the State.
- 6.** On 20.12.2019 the Head Constable, Rupeswar Saikia, the concerned Process Server was examined by the Court as State Witness No. 1 and fixed 03.01.2020 for examination of the Gaonburah.
- 7.** On 03.01.2020, Hajarat Ali, the concerned Gaonbuarh was examined by the Court as State Witness No. 2 and fixed 14.01.2020 for appearance of the opposite party/proceedee, i.e., the present petitioner, in the case and for filing of written statement and documents by her.
- 8.** On 14.01.2020, the opposite party, i.e., the petitioner herein remained absent in the said F.T. Case before the Tribunal and after hearing the concerned Government Pleader of the State, the Tribunal passed the impugned ex-parte order, thereby disposed of the reference made by the Superintendent of Police (Border), Baksa holding the proceedee/opposite party, i.e., the petitioner herein to be a foreigner under the Foreigners Act, 1946 who had illegally entered into the territory of India (Assam) from the specified territory after 25.03.1971.
- 9.** Hence, this writ petition filed by the petitioner on 03.01.2024 being dissatisfied in holding her to be a foreigner under the Foreigners Act, 1946, praying amongst others, to set aside the said ex-parte opinion dated 14.01.2020 passed by the Foreigners Tribunal, Baksa, Tamulpur in said F.T. Case No. 50/BAKSA/2019 with an interim prayer to stay the operation of the said impugned ex-parte opinion dated 14.01.2020.
- 10.** From the records of the case, pertaining to service of notice of the case to the proceedee concerned, i.e., the petitioner herein, on perusal of the report of the Process Server dated 17.11.2019, namely, Rupkowar Singha, Head Constable (Border) we have seen that — the said Process Server indicated that when he went to the house of the proceedee in the given address along with the concerned Gaonburah (Village Headman) to serve notice of the case, though he found her in her residence, she refused to accept the notice and as such, in presence of the said Gaonburah copy of the notice was hanged on a wall of a public institution in the village and after

obtaining the signature of the concerned Gaonburah, namely, Md. Hazarat Ali, the main copy of the notice was returned to the Tribunal.

11. The said Process Server, Rupkowar Singha on receipt of summon appeared before the Tribunal on 20.12.2019 and stated before it that he went in search of the petitioner at village Pokalagi but he did not find her, and as such, pasted a copy of the notice in presence of witnesses at a conspicuous place.

12. The concerned Village Headman on receipt summon appeared before the Tribunal on 03.01.2020 and submitted that he went with the police in search of the opposite party (petitioner herein) at village Pokalagi and found her, but she refused to accept the notice and as such, the notice was pasted at a conspicuous place in presence of him, i.e., the said Village Headman.

13. A Full Bench of this Court in the case of *State of Assam & Others -Vs- Moslem Mondal & Others*, reported in *2013 (1) GLT 809* at Para 101 and 102 dealt with the just, proper and reasonable procedure for the purpose of service of notice on the person who is suspected to be a foreigner considering the fact that the proper service of notice assumes importance as the Tribunal has to render its opinion also in an ex-parte proceeding, on the question referred to it even in the absence of any evidence on record and solely on the basis of materials initially submitted by the Referral Authority before the Tribunal and at the time of making the reference, since the Referral Authority is not required to adduce any evidence to substantiate that the proceedee is not a foreigner where the burden, in view of Section 9 of the Foreigners Act, 1946 lies on the proceedee.

14. In the said case of *Moslem Mondal* (Supra), the Hon'ble Full Court at Para 102 laid down the procedure required to be adopted in the matter of service of notice by the Tribunals on the proceedee, making such procedure applicable to all the proceedings pending before the Tribunals where the notices were yet to be issued or issued but not served. Amongst others, at 102 (v), the Hon'ble Full Court laid down that — "*If the proceedee or any available adult member of his family refuses to accept the notice, the process server has to give a report in that regard along with the name and address of a person of the locality, who was present at the time of making such an effort to get the notices served, provided such person is available and willing to be witness to such service. The signature/thumb impression of such witness, if present and willing, must be obtained.*"

15. Order 3 (5) (a) to (j) of the Foreigners (Tribunals) Order, 1964 provides for the procedure regarding service of notice on the proceedee in the reference to be answered by the Foreigners Tribunal where the proceedee is or is not a foreigner within the meaning of the Foreigners Act, 1946. The Foreigners (Tribunals) Order, 1964 has been framed under Section 3 of the Foreigners Act, 1946. Therefore, the provisions of said 1964 Order have a statutory force and are binding.

16. Order 3 (5) (e) of said Foreigners (Tribunals) Order, 1964 stipulates that — *“if the proceedee or an available adult member of his or her family refuses to accept the notice, the process server shall give a report to the Foreigners Tribunal in that regard along with the name and address of a person of the locality, who was present at the time of making such an effort to get the notices served, provided such person is available and willing to be a witness to such service and the process server shall obtain the signature or thumb impression of such witness, if he or she is present and willing to sign or put his or her thumb-impression, as the case may be.”*

17. From the above, we have seen that the statements of the Process Server as well as the concerned Gaonburah are contradictory.

18. From the records of the case we have also seen that notice on the petitioner/proceedee in said F.T. Case No. 50/BAKSA/2019 was neither served as required under Order 3 (5) (e) of said 1964 Order nor as provided by the Full Bench of this Court at Para 102 (v) in the said case of *Moslem Mondal* (Supra).

19. Since we found that the notice on the proceedee/petitioner, namely, AMBIYA BIBI was not duly served in F.T. Case No. 50/BAKSA/2019, therefore, the impugned ex-parte order dated 14.01.2020 passed by the learned Foreigners' Tribunal, Baksa, Tamulpur in said F.T. Case No. 50/BAKSA/2019, challenged in this writ petition, cannot sustain in law.

20. Accordingly, the ex-parte order dated 14.01.2020 passed by the learned Foreigners' Tribunal, Baksa, Tamulpur in said F.T. Case No. 50/BAKSA/2019 passed against the petitioner is hereby set aside and quashed.

21. Since the petitioner has now come to know about the notice issued to her by the Foreigners' Tribunal, Baksa, Tamulpur in said F.T. Case No. 50/BAKSA/2019, we direct the petitioner to appear before the said Tribunal at Tamulpur in said F.T. Case, by 02.04.2024, along

with a certified copy of this order.

22. Further, on her appearance before the said Tribunal in said F.T. Case No. 50/BAKSA/2019 by 02.04.2024, the petitioner/proceedee shall file her written statement and also her written Evidence-in-Chief with all the relevant documents. Thereafter, the Tribunal shall dispose of the said F.T. Case in accordance with law as provided under the Foreigners Act, 1946 as well as the provisions specified in the Foreigners Tribunal Order, 1964.

23. However, we also make it clear that failure on the part of the petitioner/proceedee to comply with the directions specified above, the Foreigners' Tribunal, Baksa, Tamulpur in said F.T. Case No. 50/BAKSA/2019 shall be at liberty to proceed against the petitioner in accordance with law and the provisions of said 1946 Act and the provisions of said 1964 Order.

24. The records of F.T. Case No. 50/BAKSA/2019 be returned to Ms. A Verma, Standing counsel, Home Department, Assam, obtaining necessary acknowledgment from her in that regard, who in turn shall forward it to the Foreigners' Tribunal, Baksa at Tamulpur forthwith.

25. Registry shall communicate this order to the Foreigners' Tribunal, Baksa, Tamulpur as well as the Superintendent of Police (Border), Baksa, Tamulpur, forthwith.

26. With the above observations and directions, this writ petition stands allowed to the extent above.

JUDGE

JUDGE

Comparing Assistant