

GAHC010009602017



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

Case No. : WP(C)/71/2017

SUKIRON NESSA
D/O. LT. SUKUR ALI W/O. ABDUL JALIL, R/O. DUBAPARA LUPTACHAR
SONAPUR, P.S. MORNOL, DIST. GOALPARA, ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIAL, MINISTRY OF HOME
AFFAIRS, SHASTRI BHAWAN, TRILOK MARG, NEW DELHI-01.

2:THE STATE OF ASSAM
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY.-06.

3:THE SUPDT. OF POLICE B

GOALPARA
P.S. and DIST. GOALPARA
ASSAM
PIN-783121.

4:THE DY. COMMISSIONER

GOALPARA
P.S. and DIST. GOALPARA
ASSAM
PIN-783121

Advocate for the Petitioner : MR.A R SIKDAR, MR.S HOQUE,MR.M H TALUKDAR

Advocate for the Respondent : , ASSTT.S.G.I.(R-1),GA, ASSAM(R-2-4)

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

22.10.2024

(K.R. SURANA,J)

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Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. P.S. Bhattacharjee, learned CGC for the respondent No.1, Mr. G. Sarma learned Standing Counsel, Home Department representing the respondents No. 2 and 3 and Mr. P.N. Sarma, learned Government Advocate appearing for the respondent No.4.

2. By filing this writ petition under Section 226 of the Constitution of India, the petitioner has challenged the opinion dated 23.06.2016 passed in F.T. Case No. FT/5/334/MO/2015 by the learned Member, Foreigners Tribunal No. 5th at Goalpara, declaring the petitioner as a foreigner of post 25.03.1971 stream.

3. The Superintendent of Police (Border), Goalpara (respondent No.3), had made a reference to the Foreigners Tribunal bearing Ref. Case No. 619/07, which was transferred to the Foreigners Tribunal No. 5th Goalpara for a decision as to whether the proceedee Musst. Sukiran Nessa, W/O Md. Abdul Jalil Munchi of Village: Sonapur Natun Basti, P.S- Mornoi is an Indian citizen or a foreigner as defined under the Foreigners Act, 1964.

4. The reference received from the Tribunal reveals that on service of notice, the petitioner appeared before the learned Tribunal and on 11.11.2015, she had filed a written statement and the next date of the proceedings was fixed on

30.11.2015. On 30.11.2015, the petitioner along with her husband were present before the learned Tribunal and submitted their respective evidence-on-affidavit as DW-1 and DW-2 respectively. The records also reveals that on 30.11.2015, the petitioner and her husband were examined by the Foreigners Tribunal as D.W-1 and D.W.-2 on oath and as per order dated 30.11.2015, both were discharged. However, the next date was fixed on 19.12.2015 for their evidence. On the prayer made by the petitioner, the proceedings were adjourned on several dates and lastly, the matter was fixed on 05.05.2016 for documents and arguments.

5. The learned counsel for the petitioner has submitted that although the D.W-2 had filed an evidence on affidavit on 30.11.2015 and he was re-examined by the learned Tribunal orally on oath on the same date and documentary exhibits were proved by D.W-2, but in the opinion, there was no discussion on the evidence of D.W.-2.

6. The learned counsel for the petitioner has further submitted that in this case, the petitioner did not introduce the name of her mother either in the written statement or in the evidence on affidavit filed by D.W-1 and D.W-2 but the learned Tribunal rejected the evidence of the petitioner on the ground that the name of the mother "Santara" is seen in the Voter list of 1985 and therefore, posed a question that without a mother how can a person take birth and accordingly, it was held that the petitioner is not the daughter of Sukur Ali and the petitioner was declared to be a foreigner, who entered into India/Assam on or after 25.03.1971.

7. *Per contra*, the learned Government Advocate appearing for the Home Department has made his submission in support of the impugned opinion and it is submitted that the petitioner has miserably failed to establish her linkage

through her projected father and the grandfather and that their names did not match and therefore there were discrepancies in the name of the petitioner's father and grandfather and accordingly, it is submitted that the petitioner has no case at all on merit.

8. Considered the submissions made by the learned counsel for both sides and we have also perused the records received from the learned Tribunal.

9. In the present case in hand not only the Tribunal accepted the evidences on affidavit filed by D.W-1 and D.W-2 which was filed on 30.11.2015 but on the same date, the learned Tribunal had also orally examined D.W-1 and D.W-2 on oath. Therefore, it was incumbent on the part of the learned Tribunal to discuss the evidence tendered by the D.W-2.

10. From a perusal of the impugned opinion dated 23.06.2016, it is seen that the said opinion has not made any discussion on the evidence tendered by D.W.-2.

11. As the Foreigners' Tribunal is giving opinion on the issue of citizenship of a person, it is excepted that learned Tribunal would discuss all the evidences on record and then answer the reference referred before it. Therefore, as the evidence of D.W-2 has not been discussed in the impugned opinion, the Court is not inclined to accept the submissions made by the learned Government Advocate that even on a perusal the evidence of D.W-1 and D.W-2, no case was made out by the petitioner.

12. Such a submission can only be examined only after the Tribunal examines and discusses the evidence of D.W-1 and D.W-2. Premature examinations of the value of evidence of D.W-1 and D.W-2, without the evidence of D.W-2 being discussed by the learned Tribunal would be pre-judicial to the interest of the

petitioner.

13. Accordingly, in light of the discussions above, the Court has no hesitation to set aside the impugned opinion dated 23.06.2016 passed by the learned Tribunal, Foreigners Tribunal No. 5th Goalpara, in connection with FT Case No. FT/5/334/MO/2015 arising out of Ref. Case No. 619/07.

14. The matter is remanded back to the said learned Tribunal for fresh opinion after discussing the entire evidence on record.

15. The petitioner was granted bail vide order dated 10.01.2017. In the said context, the learned counsel for the petitioner submits that as per his instructions, in compliance of the order dated 10.01.2017, the petitioner has furnished bail bond before the Superintendent of Police (Border), Goalpara. The said bail shall stand extended till the next date upon appearance of the petitioner before the learned Tribunal. The petitioner shall be at liberty for making a prayer before the learned Foreigners' Tribunal for extension of bail, if so advised.

16. We direct the petitioner to appear before the learned Foreigners Tribunal No. 5th at Goalpara on or before 18.11.2024 and by producing a certified copy of this order, seek further instructions from the learned Tribunal.

17. The Registry shall return the records to the learned Tribunal expeditiously.

18. Accordingly, the writ petition shall stand allowed to the extent as indicated above.

JUDGE

JUDGE

Comparing Assistant