

GAHC010008302024



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

WRIT PETITION (CIVIL) NO. 250/2024

1) Hamida Begam (Petitioner/Proceedee)
(Hamida Khatun @ Hamida Bewa)
Aged 65 years
Village- Alangmari
P.S. Gobardhana,
Pin-781313
District-Baksa (BTAD), Assam

..... Petitioner

— Versus —

1) The Union of India
Represented by the Secretary
to the Government of India,
Department of Home, New Delhi
Pin-110001

2) The State of Assam
Represented by the Secretary
to the Government of Assam
Department of Home, Dispur
Guwahati-781006

3) The District Commissioner, Baksa
Pin-781363

4) The Superintendent of Police (B), Baksa
Mushalpur-781313

5) The Election Commission
Government of India
New Delhi-110001.

6) The State Co-Coordinator of National
Registration (NRC), Assam
Guwahati-781032

..... Respondents.

Advocate for the Petitioner : Mr. A. Roshid
Advocates for the Respondents : Mr. G. Sarma, SC,
Home Department,
Mr. P Sarma, Addl. Sr. Govt. Advocate
Mr. H. Kuli, SC
Election Commission of India

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE BUDI HABUNG

Date of Judgment : **06.03.2024**

JUDGMENT AND ORDER

(M.R. Pathak, J)

Heard Mr. A. Roshid, learned counsel appearing for the petitioner and Mr. G. Sarma, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 4 and 7. Also heard Mr. P. Sharma, learned Additional Senior Government Advocate, Assam for the respondent No. 3 and Mr. H. Kuli, learned Standing Counsel, Election Commission of India for the respondent No. 5.

2. This writ petition has been filed on 12.01.2024 by the petitioner against the ex-parte judgment and order dated 10.03.2009 passed by the learned Foreigners Tribunal-II, Barpeta in F.T. (2nd Tribunal) Case

No. 201/2007, whereby the Tribunal declared the petitioner as a foreigner under the Foreigners Act, 1946.

3. It is contended by the petitioner that she received notice from the Foreigners Tribunal-II, Barpeta, but could not appear before the said Tribunal and failed to file her written statement on the date fixed and thereafter the Tribunal passed the ex-parte order dated 10.03.2009 holding her to be a foreigner.

4. Petitioner stated that pursuant to said ex-parte order dated 10.03.2009 in F.T (2nd Tribunal) Case No. 201/2007 passed by the Foreigners Tribunal-II, Barpeta, holding her as a foreigner, police on 30.10.2023 took her in custody and detained her at Matia Detention Camp, District-Goalpara where she is under detention since 30.10.2023.

5. Petitioner stated that she is an Indian by birth and her father, mother and husband have already expired including her full family members. She stated that name of her father was Bandu Sheikh and her mother was Joyban Nessa @ Phuljan Nessa and that both of their names figured in the voters lists of 1966 and 1970 at village Rangapani of Kamrup district under No. 48 Boko Legislative Assembly Constituency.

6. Petitioner also stated that she was born at village No. 1, Uttar Rangapani under Police Station-Boko, district- Kamrup and married with one Rahimuddin @ Rahim Sheikh on 10.09.1973 from village Alengamari district Baksa and in that regard the Secretary of No. 44 Bhakhuradia Rangeswari Gaon Panchayat, issued a certificate.

Petitioner stated that her name figured in the voter list of 1989 from village Alengamari, Police Station Gobardhana, district Baksa under No. 40 Sorbhog Legislative Assembly Constituency with her husband Rahimuddin and that though she is Hamida Khatun, but her name was wrongly shown as Emeda Khatun in the said voter list. She also stated that she is the second wife of her husband Rahimuddin.

7. Petitioner further contended that her name also appeared in the voters lists of 1997, 2021 from village Alengamari and Uttar Rangapani under No. 40 Sorbhog Legislative Assembly Constituency.

8. Hence, this writ petition by the petitioner to set aside and quash the impugned ex-parte order dated 10.03.2009 passed by the learned Foreigners Tribunal-II, Barpeta in F.T. (2nd Tribunal) Case No. 201/2007 with interim prayer to grant her bail in said the F.T. Case.

9. On being called for, the record of F.T (2nd Tribunal) Case No. 201/2007 has been placed by Mr. G. Sarma, Standing Counsel, Home Department from the Foreigners Tribunal-II, Barpeta.

10. From the records, we have seen that during the force of IM(D)T Act, 1983, Superintendent of Police (Border), Barpeta referred the case of the petitioner to the Foreigners Tribunal, Barpeta to give its opinion as to whether the petitioner is a foreigner or not. After striking down of the said IM(D)T Act, the said referred case was transferred to the Foreigners Tribunal-II, Barpeta under the Foreigners Act, 1946, wherein it was registered as F.T. (2nd Tribunal) Case No. 201/2007.

11. From the records of the case, we have seen that on 17.05.2007, the Tribunal issued notice to the petitioner under the Foreigners Act, 1946 fixing 25.06.2007 as the date of her appearance and for filing of reply/written statement. Said notice was sent to the address of the proceedee at village Alengamari, Police Station Sorbhog, District-Barpeta.

12. Record reveals that the Officer-in-Charge of Sorbhog Police Station on 06.06.2007 returned the notice to the Tribunal stating that the village Alengamari falls under the jurisdiction of Barpeta Road Police Station and therefore the notice should be served upon the petitioner through the Barpeta Road Police Station for necessary action. Thereafter, on 21.06.2007 the Tribunal re-sent the notice to the Barpeta Road Police Station was received by the said Barpeta Road Police Station on 21.06.2007 itself. Then the said notice was forwarded to Bahbari Police Post for service of notice on the petitioner/proceedee. The concerned Process Server of Bahbari Police Post on 24.06.2007 gave its note stating that the notice was served upon the proceedee by serving her a copy and the Barpeta Road Police Station received the same on 25.06.2007.

13. As such, on 25.06.2007, the notice could not have been returned after service. But, since the matter was fixed on 25.06.2007, the Tribunal on 25.06.2007 observed that notice returned after service and the petitioner/ proceedee is absent without steps. Accordingly, the Tribunal fixed the matter on 24.07.2007 for necessary order. However, petitioner remained absent on 24.07.2007 and on the subsequent dates i.e. on 24.08.2007, 01.10.2007, 30.10.2007,

26.11.2007, 26.12.2007, 24.01.2008 and 01.03.2008. On 01.03.2008, the Tribunal passed an order to proceed with the matter ex-parte and accordingly, issued notice to the Local Verification Officer.

14. Thereafter, matter was fixed on 29.03.2008, 28.04.2008, 28.05.2008, 25.06.2008, 24.07.2008, 30.08.2008, 29.09.2008, 12.11.2008, 11.12.2008, 21.01.2009, 26.02.2009, 10.03.2009. During all these dates, the petitioner/proceedee remained absent before the Tribunal and did not take any steps for her appearance in the matter. As such, on 10.03.2009, the ex-parte judgment and order was passed by the Tribunal holding the petitioner/the proceedee to be a foreigner under the Foreigners Act, 1946 as she failed to furnish any relevant documents in support of her citizenship. However, on perusal of the records, we found that the initial notice issued by the Tribunal on 17.05.2007 fixing the case on 25.06.2007 was served upon her belatedly as the Barpeta Road Police Station received the notice only on 23.06.2007 and the report of the process server from Bahbari Police Post under Barpeta Road Police Station was of only 24.06.2007. As such, the petitioner/proceedee did not receive the said notice on time for her appearance and to file her written statement.

15. Learned counsel appearing for the Home Department, on perusal of the record, particularly the notice dated 17.05.2007 of the Tribunal also found that the said notice could not have been served upon the petitioner on 21.06.2007 since Barpeta Road Police Station received it only on 23.06.2007. Record also reveals that the concerned process server was not examined by the Tribunal regarding the service of notice upon the petitioner/proceedee while passing the impugned ex-

parte order dated 10.03.2009.

16. Order 3(5)(a) to (j) of the Foreigners (Tribunal) Order, 1964 deals with service of notice on the proceedee. In the case of *State of Assam and others -vs- Moslem Mondal and others*, reported in 2013 (1) GLT 809 at paragraph 102, the Full Bench decision of this Court also laid down the procedure to be adopted while serving notice to a proceedee by the Foreigners' Tribunal under the Foreigners Act, 1946.

17. As we found that the notice upon the petitioner/ proceedee was not served much ahead of time and inconformity with the provisions of Order 3(5)(a) to (j) of the Foreigners (Tribunal) Order, 1964 as well as the observation made by the Hon'ble Full Bench in the case of *Moslem Mondal* (supra) at paragraph 102, we are of the view that the notice of the said F.T.(2nd Tribunal) Case No. 201/2007 issued by the Foreigners Tribunal-II, Barpeta on 17.05.2007 cannot be said to be duly served upon the proceedee within time.

18. Accordingly, the impugned ex-parte judgment and order dated 10.03.2009 passed by the Foreigners Tribunal-II, Barpeta in F.T.(2nd Tribunal) Case No. 201/2007 is hereby set aside and quashed as the notice in the said case was not duly served within time and in conformity with the provisions of Order-3(5)(a) to (j) of Foreigners (Tribunals) Order, 1964 as well as the provisions specified by the Hon'ble Full Bench in the case of *Moslem Mondal* (supra).

19. Since the impugned ex-parte judgment and order dated 10.03.2009 passed by the Foreigners Tribunal-II, Barpeta in F.T.(2nd Tribunal) Case No. 201/2007 has been set aside and quashed, the

petitioner/proceedee Hamida Begam shall be released forthwith from the Detention Camp, Matia, District-Goalpara.

20. Since the petitioner has now come to know about the notice issued to her by the Foreigners' Tribunal-II, Barpeta in said F.T. (2nd Tribunal) Case No. 201/2007, she is directed to appear before the said Tribunal at Barpeta in the said F.T. Case, by 02.04.2024, along with a certified copy of this order.

21. Further, on her appearance before the said Tribunal in said F.T. (2nd Tribunal) Case No. 201/07 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 Foreigners' Tribunal, (2nd), Barpeta 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.

22. 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-II, Barpeta in said F.T. (2nd Tribunal) Case No. 201/2007 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.

23. The records of said F.T. (2nd Tribunal) Case No. 201/2007 be returned to Mr. G Sarma, Standing counsel, Home Department, Assam, obtaining necessary acknowledgment from him in that regard,

who in turn shall forward it to the Foreigners' Tribunal-II, Barpeta, forthwith.

24. Registry shall communicate this order to the Foreigners' Tribunal-II, Barpeta as well as the Superintendent of Police (Border), Barpeta and also the Superintendent of Police (Border), Baksa, Tamulpur, forthwith.

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

JUDGE

JUDGE

Comparing Assistant