

GAHC010020532017



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

WP(C)/2383/2017

Musstt. Saleha Begum
W/O Md. Sanowar @ Sanur Ali
D/O Kasem Ali Village-Sariahtali P.S. and
District Nalbari, Assam

.....Petitioner

-Versus-

1. The Union Of India,
Represented By the Secretary to the Government
of India, Department of Home Affairs, New Delhi
2. The State of Assam,
Represented by the Commissioner and
Secretary Home and Political B Department Dispur
3. The Superintendent of Police Border,
Nalbari Assam
4. The Deputy Commissioner, Nalbari, Assam
5. The Officer-In-Charge, Nalbari Police Station
Nalbari Assam

.....Respondents

For Petitioner : Mr. B.C. Das, Advocate
For Respondent(s) : Mr. S. S. Roy, CGC, Union of India
Mr. A. Kalita, SC, Home Department
Mr. H. K. Hazarika, Govt. Advocate

Date of Judgment : 23.09.2024

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

(MRIDUL KUMAR KALITA, J)

1. Heard Mr. B.C. Das, learned counsel appearing for the petitioner and Mr. S.S. Roy, learned C.G.C for the respondent No.1, Union of India. Also heard Mr. A. Kalita, learned Standing Counsel, Home Department, Assam for the respondent Nos. 2, 3 and 5 as well as Mr. H.K. Hazarika, learned Government Advocate, for the respondent No.4.
2. This writ petition has been filed by the petitioner, namely, Musstt. Saleha Begum, impugning the order/opinion dated 30.03.2017, passed by learned Foreigners Tribunal No. 1, Nalbari in Case No. F.T. (Nal) Case No. (N) 3/2009, whereby the petitioner has been declared as a foreigner under the Foreigners Act, 1946, who had illegally entered into India (Assam) on or after 25.03.1971.
3. The gist of accusation in this case is that suspecting the

petitioner to be a foreigner, an inquiry was conducted regarding the citizenship of the petitioner, during which the petitioner was suspected to be a foreigner. On the basis of the inquiry report, the Superintendent of Police (Border) Nalbari made a reference to the learned Foreigners' Tribunal No. 1, Nalbari, for rendering the opinion regarding the citizenship status of the petitioner.

4. It is pertinent to mention herein that though the reference was made in the name of Musstt. Suleha Begum, wife of Sanowar Hussain, however, notice was issued to her by the learned Foreigners Tribunal in the name of Musstt. Saleha Begum.
5. On receipt of the notice, the petitioner appeared before the Tribunal and filed her written statement on 21.12.2016.
6. In her written statement, the petitioner has stated that she is a citizen of India and her father's name is Kasem Ali and she was born in the Village-Bhakuamari in the Barpeta District. She has also stated that she was married to one Sanowar Ali @ Sanur Ali, son of late Sarab Ali of Sariyahtoli Village. She has also stated that the name of her father Kasem Ali is included in the voter list of 1965.
7. She has also stated that earlier also one reference case was registered against her, i.e., F. T. (N) Case No. 4593/2006, wherein the learned Tribunal, after recording the evidence and

after considering the documents produced by her declared her to be a citizen of India.

- 8.** In support of her contentions, the petitioner examined herself as OPW-1. In her evidence on affidavit, she has reiterated the facts which she has stated in her written statement. She has exhibited a copy of Order/Opinion, dated 08.09.2014, passed in F. T. (N) Case No. 4593/2006 as Exhibit-1. She has also exhibited a copy of Voter List of 1965 of No. 47 Sarbhog Legislative Assembly Constituency in respect of her projected father, late Kasem Ali, as Exhibit-2. She has also exhibited a copy of, certified copy of the extract of Voter List of 2011 of Sariyahtoli Village No. 57, where her name has been shown as doubtful elector.
- 9.** Mr. B. C. Das, learned counsel for the petitioner has submitted that the Learned Tribunal was wrong in not considering the fact that the petitioner was earlier declared to be an Indian citizen by the learned Foreigners Tribunal, Nalbari in its opinion/order dated 08.09.2014 passed in F. T. (N) Case No. 4593/2006.
- 10.** Learned counsel for the petitioner has submitted that the learned Tribunal has distinguished the identity of the present petitioner with the proceedee of F. T. (N) Case No. 4593/2006 only on the basis that in that case the proceedee was of 22 years of age and was shown to be wife of one Sanur Ali of village-Sariyahtoli and her country of origin was not disclosed in Form No. 1.

11. Learned counsel for the petitioner has submitted that the Learned Tribunal has erred in holding that in F. T. (N) Case No. 4593/2006 the proceedee was not the present petitioner. He has submitted that as the petitioner's father's name and other details tally with that of the proceedee in F. T. (N) Case No. 4593/2006. It is submitted that merely because the name of the husband in the earlier proceeding does not tally with the name of the husband in the present proceeding, the learned Tribunal was wrong in holding that the proceedee in both the cases were not the same, as the lineage and identity of a person is established through his or her parents and not through the spouse.
12. Learned counsel for the petitioner has also submitted that the learned Tribunal has erred in holding that the principle of res judicata does not apply in F. T. (N) Case 03/2009 as from the materials on record there remains no doubt that the petitioner was declared to be an Indian citizen in F. T. (N) Case No. 4593/2006. In support of his submission the learned counsel for the petitioner has cited the ruling of Apex Court in the case of "***Abdul Kuddus Vs. Union of India and others***" reported in **2019 (6) SCC 604** wherein it has been observed as follows:

"24. The opinion/order of the Tribunal, or the order passed by the Registering Authority based upon the opinion of the Foreigners Tribunal, as the case may be, can be challenged by way of writ proceedings. Thus, it would be incorrect to hold that the opinion of the Foreigners Tribunal and/or the consequential

order passed by the Registering Authority would not operate as res judicata. Both the opinion of the Tribunal and the order of the Registering Authority result in determination of rights/status under the statute and by an authority after a contest on the merits which would necessarily operate as a bar to subsequent proceedings before the same authority for redetermination of the same issue/question. This Court in Ujjam Bai v. State of U.P. [Ujjam Bai v. State of U.P., AIR 1962 SC 1621] has held that the principles of res judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or a writ unless the erroneous determination relates to the jurisdictional matter of that body."

- 13.** Learned counsel for the petitioner has, therefore, submitted that the impugned opinion rendered by the learned Foreigners Tribunal, Nalbari in F. T. (N) Case No. 4593/2006 is liable to be set aside.
- 14.** On the other hand, Mr. A. Kalita, learned Standing Counsel, Home Department has submitted that the learned Tribunal was right in opining that the present petitioner is not an Indian citizen as she has failed to prove any linkage with her projected father and she has failed to discharge her burden to show that she is an Indian

citizen. He also submits that the proceeding in F. T. (N) Case 4593/2006 as well as the present case namely F.T. (Nal) Case No. (N) 3/2009 are not the same persons and the petitioner has not been able to prove the fact that she was also the proceedee in F. T. (N) Case 4593/2006.

15. Learned Standing Counsel, Home Department has submitted that the petitioner has also failed to prove any link document to show that she is the daughter of Kasem Ali whose name has been reflected in the voter list of 1965. He has submitted that even for argument's sake if it is assumed that the proceedee in both the cases is one and the same person and it is the petitioner who was the proceedee in the F. T. (N) Case No. 4593/2006 where she was declared to be an Indian citizen. However, the principle of *res judicata* would still not be applicable as for applicability of the principle of *res judicata*. It is necessary that the earlier case must be decided by a reasoned order and if the earlier decision is without any reasons then the principle of *res judicata* would not be applicable if by a subsequent case the petitioner is declared to be a foreigner. In support of his submission, he has cited a decision of this Court in the case of **"Rafikul Islam Vs. The Union of India"** [judgment dated 03.03.2023 passed in case number WP(C) No. 251/2023] wherein, it was observed as follows:

"6. The principles of res judicata under the law requires two conditions precedent to be satisfied i.e., the earlier dispute must be between the same parties

and secondly, the issue between the parties must be decided. The very condition that the issue must be decided requires that it must be decided by a reasoned order and not by an order merely depicting the view that the Foreigners Tribunal may have taken without any reason. From such point of view, we are unable to accept the plea of the petitioner that the subsequent proceeding against the petitioner in F.T.Case No.05/2019 corresponding to S.P.Case No.731/2008 is barred by the principles of res judicata."

- 16.** Learned Standing Counsel, Home Department, Assam, has submitted that the opinion rendered by the Foreigners Tribunal, Nalbari, in F. T. (N) Case 4593/2006 was not a reasoned opinion, therefore, the said opinion would not operate as *res judicata* in F.T. (Nal) Case No. (N) 3/2009. He, therefore, submits that the impugned opinion in F.T. (Nal) Case No. (N) 3/2009 does not warrant any interference by this Court in exercise of its Writ Jurisdiction, and he submits that this writ petition is, therefore, liable to be dismissed.
- 17.** We have considered the rival submissions made by both the sides. We have also gone through the records of F. T. (N) Case 4593/2006 as well as F.T. (Nal) Case No. (N) 3/2009, which were requisitioned in connection with the instant writ petition.
- 18.** It appears that in the F.T. (Nal) Case No. (N) 3/2009, the petitioner took the plea before the Tribunal that she has been already declared to be an Indian citizen in an earlier proceeding,

i.e., F. T. (N) Case 4593/2006. However, the said contention was not considered by the learned Tribunal on the ground that the proceedee in the F. T. (N) Case 4593/2006 was Saleha Begum, who was aged about 22 years and was the wife of one Sanur Ali of village-Sariyahtoli, and her country of origin was not disclosed in form No. 1. No other reason has been mentioned by the learned Tribunal in the impugned opinion for coming to the finding that the petitioner was not a proceedee in the F. T. (N) Case 4593/2006.

- 19.** On perusal of the records of F. T. (N) Case 4593/2006, it appears from the testimony of the proceedee recorded in that case as OPW No. 1, on 04.07.2014, that the name of the proceedee in that case was Musstt. Saleha Khatun, alias Begum, and her father's name was late Kasem Ali, and her husband's name was Sanowar Ali.
- 20.** The names and all other details as deposed by OPW-1 in F. T. (N) Case 4593/2006 tally with the description of the petitioner in the instant case, as in F.T. (Nal) Case No. (N) 3/2009 also, while deposing as OPW-1 on 23.03.2017, the petitioner stated her name to be Saleha Begum, daughter of late Kasem Ali and wife of Sanowar Ali @ Sanur Ali, of village Sariyahtoli.
- 21.** It appears that apart from the discrepancy of age of the proceedee in both the proceedings, all other description of the

proceedee tally. As regards age of the proceedee in F. T. (N) Case 4593/2006, it appears that while deposing as OPW No. 1 in the said reference case, on 04.07.2014, she stated her age to be 35 years, whereas in the impugned opinion dated 30.03.2017, in F.T. (Nal) Case No. (N) 3/2009 it was observed that the age of the petitioner Saleha Begum in F. T. (N) Case 4593/2006 was about 22 years, which appears to be contrary to what the proceedee had deposed before the Tribunal in that case.

- 22.** Moreover, on perusal of the records of the F.T. (Nal) Case No. (N) 3/2009, it appears that in the inquiry report on the basis of which reference was made in F.T. (Nal) Case No. (N) 3/2009, the age of the petitioner has been mentioned as 32 years. If the same age is taken into consideration, it appears that there would be no much discrepancy between the age of the proceedee of F. T. (N) Case 4593/2006 and F.T. (Nal) Case No. (N) 3/2009.
- 23.** In view of above, we are of the considered opinion that the reasoning given by the learned Tribunal in the impugned order for holding that the proceedee of F. T. (N) Case No. 4593/2006 as well as the proceedee of F.T. (Nal) Case No. (N) 3/2009 were different persons does not conform to the logic and reasons.
- 24.** We have also gone through the opinion/judgment dated 08.09.2014 rendered by learned Foreigners Tribunal in F. T. (N) Case No. 4593/2006 whereby the proceedee Musstt. Saleha

Begum was declared to be a citizen of India.

- 25.** On perusal of the said order, it appears that the said order may not be regarded as an order without any reasons, as sufficient reasons were mentioned by the learned Tribunal in arriving at the finding in the said reference case that the proceedee was an Indian Citizen. As the opinion rendered by the Foreigners Tribunal in F. T. (N) Case No. 4593/2006 has not been challenged by the State, the correctness of the same cannot be considered in the present writ proceeding and it remains to have a binding effect.
- 26.** It appears that learned Foreigners Tribunal No. 1, Nalbari, while holding in F.T. (Nal) Case No. (N) 3/2009, that the petitioner was not the proceedee in F. T. (N) Case No. 4593/2006, did not consider the case record of said F. T. (N) Case No. 4593/2006, neither any report was called for, from the Superintendent of Police (Border) Nalbari, to ascertain the fact as to whether, the proceedee in both the cases, i.e., F.T. (Nal) Case No. (N) 3/2009, and F. T. (N) Case No. 4593/2006, were one and the same person or not.
- 27.** Therefore, we are of the view that this is a fit case of remand. Accordingly, we hereby set aside the impugned order dated 30.03.2017, passed by the learned Foreigners Tribunal No. 1, Nalbari in F.T. (Nal) Case No. (N) 3/2009, and remand the said

case back to the said Tribunal, i.e., Foreigners Tribunal No. 1, Nalbari for calling for a report from the Superintendent of Police (Border) Nalbari, regarding the fact, as to whether the proceedee in F.T. (Nal) Case No. (N) 3/2009, and the proceedee in F. T. (N) Case No. 4593/2006, were one and the same person or different. Thereafter, on receipt of such report from the, Superintendent of Police (Border) Nalbari, the learned Foreigners Tribunal No. 1, Nalbari shall decide as to whether to issue notice to the present petitioner under the Foreigners Act, 1946 and the Foreigners (Tribunals) Order, 1964 or not and if it issues notice, the learned Foreigners Tribunal No. 1, Nalbari shall render a fresh opinion regarding the reference made by the Superintendent of Police (Border) Nalbari in F.T. (Nal) Case No. (N) 3/2009.

- 28.** This writ petition is accordingly, disposed of.
- 29.** Send back the record of F.T. (Nal) Case No. (N) 3/2009 as well as F. T. (N) Case No. 4593/2006 to the learned Foreigners Tribunal No. 1, Nalbari along with a copy of this judgment forthwith to comply with the directions made therein.
- 30.** Let copies of this judgment be also forwarded to the Superintendent of Police (Border) Nalbari as well as the Deputy Commissioner, Nalbari forthwith for their information and necessary use.

- 31.** The interim protection granted to the petitioner by order dated 03.05.2017 in this writ petition is hereby merged with this order.

JUDGE

JUDGE

Comparing Assistant