

GAHC010040652024



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

Case No. : I.A.(Civil)/719/2024

JOHURA KHATUN
W/O- SAHAJAMAL ALI,
D/O- LATE JAHIRUDDIN ALI,
R/O- VILLAGE BALARCHAR,
P.S- MERERCHAR,
DIST- BONGAIGAON, ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, GRIHA MANTRALAYA , NEW DELHI- 110001.

2:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVT. OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-6

3:THE ELECTION COMMISSION OF INDIA
REP. BY THE CHIEF ELECTION COMMISSIONER OF INDIA
NIRVACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001

4:THE STATE COORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
BHANGAGARH
GUWAHATI-05
DIST- KAMRUP (M)

5:THE DEPUTY COMMISSIONER
BONGAIGAON

P.O AND DIST- BONGAIGAON
ASSAM

PIN-783380

6:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON

P.O AND DIST- BONGAIGAON
ASSAM

PIN-78338

Advocate for the Petitioner : MR. S C BISWAS

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

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

ORDER

Date : 20.04.2024
(S.P. Khaund, J)

- 1.** The applicant Masstt Johura Khatun has filed this application with prayer for extension of time to appear before the Foreigners Tribunal No. 2, Bongaigaon, Abhayapuri. Vide order dated 01.03.2023 passed by this Court in W.P.(C) No. 316/2023, the applicant was directed to appear before the Foreigners Tribunal – 2, Bongaigaon, Abhayapuri on 05.04.2023.
- 2.** It is submitted that the applicant was suffering from serious ailment with restriction of movement and was being advised complete bed rest and thus she was unable to appear before the learned Tribunal on 05.04.2023. It is further submitted that the applicant was under treatment from 06.05.2023 to 31.12.2023. After recovery from her ailment, due to financial hardship, the

applicant was unable to meet her engaged counsel at Guwahati, who was conducting her case i.e. the writ petition captioned above. It is further submitted that after recovering from her ailment and on being able to manage for her travelling expenses, the applicant collected the relevant documents, but unfortunately the stipulated period for appearing before the learned Foreigners Tribunal had already expired.

3. Due to her plight the applicant has prayed for extension of time to appear before the Foreigners Tribunal with relevant documents to establish her claim of citizenship and further prayed that till then this Court may pass the order of interim protection to enable her to appear before the learned Foreigners Tribunal – 2, Bongaigaon at Abhayapuri.

4. The Union of India is arrayed as respondent No. 1. The Home Department, Assam is arrayed as respondent Nos. 2 and 6. Election Commission of India is arrayed as respondent No. 3 and the Deputy Commissioner- Bongaigaon is arrayed as respondent No. 5.

5. Heard Mr. F.A. Hassan, learned counsel for the applicant. Also heard Mr. G. Sarma, learned Standing Counsel, Home Department, Assam for respondent Nos. 2 and 6; Mr. H. Kuli, learned counsel appearing on behalf of Mr. A.I. Ali, learned Standing Counsel, Election Commission of India for respondent No. 3; Mr. P. Sarma, learned Additional Senior Government Advocate, Assam for respondent No. 5 and Mr. D. Upamanyu, learned Standing Counsel for the Health Department.

6. Contrary to the submission of the learned counsel for the applicant, the learned counsel for the respondents laid stress in their arguments that this application is liable to be dismissed. The applicant is not entitled to relief. The

conduct of the applicant clearly reveals that she was complacent. It has been falsely submitted that the applicant met with several hurdles which led to the delay in her appearance before the tribunal within the time stipulated by this Court. The Annexure-B, of the application is fit to be dismissed. If any rational person scrutinizes the Annexure-B i.e. the Medical Certificate issued by the Superintendent of Barpeta Civil Hospital, Kalgachia, with due diligence, it cannot be accepted as a genuine certificate. It is submitted that a mockery of the sanctity of judicial proceedings cannot be allowed by accepting such certificates. The Annexure-B reveals that the Superintendent of Barpeta Civil Hospital, in a mechanical manner issued a certificate that the applicant was suffering from back pain and was under treatment from 06.05.2023 upto 31.12.2023 i.e. for more than a period of 7 months. In a blatant manner the certificate was issued with advise to the applicant to continue treatment with rest.

7. The remaining part of the arguments forwarded by both the sides will be discussed at the appropriate stage.

8. We have given our thoughtful consideration to the submissions at the Bar.

9. This Court has heard the submission of Mr. D. Upamanyu, learned Standing Counsel, Health Department who has submitted that a clarification has been obtained from the Superintendent of Barpeta Civil Hospital, Kalgachia, Dr. Nazirul Islam who has clarified that the certificate i.e. Annexure-B which was issued by him is a genuine certificate. A Superintendent can issue a certificate of treatment to any patient under his treatment. Because of her severe back ache the patient was advised to continue treatment with rest for the said period.

10. The argument forwarded on behalf of the respondents cannot be ignored. It is true that a bald statement has been given by the Superintendent while

issuing the certificate. In a vague manner the patient was advised treatment for back ache with rest.

11. We agree with the submission that there is no evidence of treatment undertaken by the patient in the hospital. No specific date and time has been provided by the applicant or by the Superintendent. It is not clear from the certificate whether the patient was an indoor patient or an outdoor patient. The severity of the applicant's backache is not fathomable. Indeed the submissions of the respondents that this certificate appears to be too farfetched cannot be ignored.

12. To consider the conduct of the applicant, the genesis of the case has to be taken into consideration. The Writ Petition (Civil) No. 316/2023 was filed by the petitioner who was aggrieved by the opinion dated 05.07.2022 passed by the Foreigners Tribunal in Case No. BNGN/FT-2/APR/Case No. 228/2016, declaring the petitioner/applicant to be a foreign citizen who entered the State of Assam subsequent to 25.03.1971. This Court vide order dated 01.03.2023 in W.P.(C) No. 316/2023 directed the applicant to appear before the Foreigners Tribunal No. 2, Bongaigaon on 05.04.2023. As the applicant was unable to appear before the Foreigners Tribunal - 2, Bongaigaon on 05.04.2023, after a prolonged period of more than 10 months, the applicant filed this application on 21.02.2024 with prayer for extension of time to appear before the Foreigners Tribunal.

13. Now the factual matrix of the genesis of this case is also apt to be mentioned. The Investigating Officer (IO) had doubts that the applicant was a foreign national who had entered into India from Bangladesh after 25.03.1971. Accordingly, the Superintendent of Police (B), Bongaigaon referred this case for opinion. The F.T. No. 2 Abhayapuri issued notice to the applicant and on receipt of notice the applicant appeared before the Tribunal and filed her reply. In her

written reply she had claimed to be an Indian citizen by birth and she submitted her evidence on affidavit along with some documents.

14. The OP adduced her evidence as DW-1 and the evidence of Jahiruddin as DW-2. The learned Tribunal, after scrutinizing the evidence adduced by the applicant, on 05.07.2022 opined that the applicant was a foreign national who illegally entered into India post 25.03.1971. Aggrieved by the said opinion the applicant preferred an application under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari, mandamus or any other appropriate writ to set aside the said impugned order/opinion. The application of the applicant was registered as WP(C) No. 316/2023 and a Co-Ordinate Bench of this Court vide order dated 01.03.2023 observed as follows:-

“3. The petitioner relies upon the voters list of 1966 of village 364 Jopea Boraichala, police station North Salmara, wherein at serial No. 114 the name of Khabar Ali Sheikh son of Omar Ali Sheikh appears. The petitioner also refers to the voters list of 1985 of village 163 Jopea Boraichala, police station Abhyapuri, wherein the name of Jahir Uddin son of Khabar Ali appears at serial No. 680. The petitioner claims that Jahir Uddin son of Khabar Ali of the voters list of 1985 is her father. To substantiate the same, the petitioner relies upon the Kabin Nama regarding the marriage of the petitioner wherein it is recorded that the father of Johura Khatun is Jahir Uddin of village Boraichala police station Abhayapuri. The petitioner also refers to a Jamabandi regarding inheritance of land of village Japaya Boroisala in respect of Jahir Uddin son of Khabar Ali where the mutation was as per the order dated 08.11.2016 of the Circle Officer in Mutation Case No. 1558/2016-17.

4. As *prima facie* there is an indication from the voters list of 1966 of village 364 Jopea Boraichala as well as the voters list of 1985 of village 163 Jopea Boraichala that the father of the petitioner Jahir Uddin is a citizen of India

as well as from the Kabin Nama it can also be seen that the petitioner is the daughter of Jahir Uddin, we remand the matter back to the Tribunal for passing a reasoned order on the claim of the petitioner by confining to the implication of the voters list of 1966 of village 364 Joepa Boraichala and the voters list of 1985 of village 163 Joepa Boraichala as well as the Kabin Nama of the petitioner and pass a reasoned order thereon. Before the Tribunal, the petitioner may rely upon any other documents or materials including the Jamabandi to establish her claim.

5. If the reasoned order to be passed is in favour of the petitioner, the same shall prevail over the earlier opinion rendered by the Foreigners Tribunal Bongaigaon No. 2 at Abhayapuri in BNBN/FT-2/APR/Case No. 228/2016 and if the reasoned order to be passed is against the petitioner, the consequence as per law shall follow.

6. The petitioner shall appear before the Foreigners Tribunal No. 2 Bongaigaon at Abhayapuri on 05.04.2023. Till such reasoned order is passed, no coercive action be taken against the petitioner."

15. When the applicant failed to appear before the Tribunal within the stipulated time frame, she filed this application for extension of time to appear before the Tribunal. The medical certificate dated 01.02.2024 issued by the Superintendent of Barpeta Civil Hospital, Kalgachia annexed to this application as Annexure-B was indeed issued in a mechanical manner stretching up to the extent of delay caused by the applicant in appearing before the Tribunal. No X-Ray Report, Prescription, Advice Slip or any other document in support of the applicant's ailment has been furnished. The severity or the adversity of the applicant's ailment is not discernable from the said Annexure-B. However in the

interest of justice, the applicant can be afforded an opportunity to appear before the tribunal and present her case. A lenient view is taken. It cannot be held solely on the basis of a medical certificate issued by the Superintendent of Barpeta Civil Hospital, Kalgachia that the applicant was negligent. Being an illiterate woman the applicant, on her part has given some reasonable ground for her delay.

16. In the wake of the foregoing discussions, it is held that equity will prevail if the applicant is given an opportunity to appear before the Foreigners Tribunal and present her case as has been directed by the Court earlier on 01.03.2023 in WP(C) No. 316/2023.

17. The application is hereby allowed with cost of Rs.3,000/- (Rupees Three Thousand) and the cost will be deposited by the applicant in the account of the District Legal Services Authority of Bongaigaon district. The applicant is accordingly directed to appear before the Foreigners Tribunal-2, Bongaigaon at Abhayapuri on 20.05.2024 in Case No. BNGN/FT-2/APR/Case No. 228/2016 along with a certified copy of this order and the receipt of payment of Rs.3,000/- (Rupees Three Thousand) to the District Legal Services Authority of Bongaigaon district.

18. This order will form a part of the order dated 01.03.2023 passed by a Co-

Ordinate Bench of this Court in WP(C) No. 316/2023.

JUDGE

JUDGE

Comparing Assistant