



Application No.	Application Received on	Date on which copy was made ready	Fees paid (Rs.)	Posting date to Delivery Desk
547543	27/10/2022	24/07/2023	100.00	24/07/2023

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

Case No. : WP(C)/797/2020

ADURI BIBI

W/O- LATE SOLAR ALI W/O- NIJAM UDDIN, VILL- BHANDARA PART-I,
DIST- KARBI ANGLA

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE SECRETARY, MIN OF HOME AFFAIRS, NEW DELHI- 01

2:THE STATE OF ASSAM
REP. BY THE SECRETARY TO THE GOVT OF ASSAM
HOME DEPTT
DISPUR
GUWAHATI- 06

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI- 07

4:THE SUPERINTENDENT OF POLICE (B)
BONGAIGAON
P.O
P.S AND DIST- BONGAIGAON
ASSAM

5:THE DEPUTY COMMISSIONER
BONGAIGAON
P.O
P.S AND DIST- BONGAIGAON
ASSAM



6:THE ELECTION COMMISSION OF INDIA
THROUGH ITS SECRETARY
NIRBACHAN BHAWAN
NEW DELHI- 01

7:THE STATE COORDINATOR
NRC
ASSAM
BIIANGAGARIH
GHY-

Advocate for the Petitioner : MR M H AHMED

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

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 16-09-2022

(M.R. Pathak, J)

Heard Mr. M. H. Ahmed, learned counsel for the petitioner and Ms. L. Devi, learned Standing counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Assistant S.G.I. for the respondent No. 1. Also heard Ms. A. Verma, learned Special counsel Foreigners' Tribunal for the respondent Nos. 3 & 4; Ms. K. Phukan, learned Government Advocate, Assam for the respondent No. 2 & 5, Mr. A. Bhuyan, learned Standing counsel, Election Commission of India for the respondent No. 6 and Ms. L. Devi, learned Standing counsel, NRC for the respondent No. 7.

2. This writ application has been filed by the petitioner being aggrieved with the opinion/final order/judgment dated 21.12.2018 passed by the learned Member, Foreigners' Tribunal No. 1, Bongaigaon in F.T. Case No. BNGN.FT/Case No. 936/2009, arising out of Ref. IM(D)T Case No. 136/2003, whereby the petitioner/proceedee has been declared as a foreigner of the stream of post 1971 advising the Superintendent of Police (Border), Bongaigaon to take all necessary steps to apprehend the opposite party/proceedee, i.e., the petitioner herein and to keep her in Detention Camp till her deportation/push back in accordance with procedure,



directing further that the name of the opposite party/proceedee concerned, i.e., the petitioner herein should be deleted, struck off from all beneficial schemes, if any, enjoyed under Government Schemes forthwith curtailing all such benefits including deleting her name from all voter enrollments and advising Superintendent of Police (Border), Bongaigaon to make an enquiry against the brothers, sisters and other family members of the petitioner.

3. The Court while issuing notice to the respondents on 06.05.2022 called for the records of said F.T. Case No. BNGN.FT/Case No. 936/2009 from the Foreigners' Tribunal No. 1, Bongaigaon and passed an interim order observing that – if in the meantime, the petitioner, if not arrested, may not be arrested. However, the petitioner shall appear before the Superintendent of Police (Border), Bongaigaon within 15 days from the said order (06.05.2022), who may obtain necessary information and documentation as required under the Rules from the petitioner for securing her presence. On such appearance, the petitioner shall furnish a bail bond of Rs.5000/- (Rupees Five thousand) with one local surety of the like amount to the satisfaction of the said authority, where after, the petitioner shall be allowed to remain on bail. The concerned Superintendent of Police (Border), Bongaigaon shall also take steps for capturing the fingerprints of both hands and biometrics of the iris of the petitioner. The petitioner shall also not leave the jurisdiction of Bongaigaon District without furnishing the details of the place of destination and necessary information including contract number to the Superintendent of Police (Border), Bongaigaon.

4. The Registry received the relevant records from the concerned Foreigners' Tribunal and have perused the same.

5. Brief facts of the case is that initially the Superintendent of Police (Border), Bongaigaon on 03.04.2008 forwarded the case under Reference No. 136/2003 to the I.M.(D) Tribunal, Bongaigaon during the force of the IM(D)T Act, 1983 for a decision/opinion as to whether the petitioner/proceedee is an illegal migrant under the said 1983 Act or not.

6. Subsequently, in view of the Government Notification No. PLB 101/2005/116 dated 19.07.2005, the said case was transferred to the Foreigners' Tribunal No. 1, Bongaigaon for a decision as per the provisions of the Foreigners Act 1946. Accordingly, it was registered before the learned Member, Foreigners' Tribunal No. 1, Bongaigaon as F.T. Case No. BNGN/FT/Case No. 936/2009 and notice in the said F.T. case was issued on 27.09.2012 to the concerned proceedee, i.e., the present petitioner, namely, Mustt. Adori Khatun, daughter of late Sohar Ali, wife of Md.



Nizamuddin, Village- No. 6 Jamboha, Police Station-Manikpur (Gerukabari Outpost), District-Bongaigaon through the process server. The petitioner appeared before the said Tribunal on 29.11.2012 and she on 11.03.2014 filed her written statement in the said matter before the Tribunal with various documents.

7. Thereafter, the matter was fixed for examination of documents. But as the petitioner remained absent without steps before the Tribunal on many dates, therefore, the Tribunal proceeded to decide the matter ex-parte. As the petitioner subsequently appeared in the matter, the Tribunal on 14.06.2016 considered to grant a last chance to the petitioner and fixed the matter for evidence and hearing of the case.

8. The petitioner on 08.08.2016 submitted her affidavit-in-evidence and the Court fixed the matter for cross examination and hearing of the case.

9. The petitioner on 09.01.2017 submitted certain new documents, i.e., Jamabandi and voter lists that were not submitted with her written statements, that were received under objection. The Tribunal accordingly by order dated 09.01.2017 fixed the matter on 24.03.2017 for cross-examination and hearing of the case.

10. In between, the petitioner remained absent with steps and also without steps. On 09.08.2018, the petitioner appeared in the matter engaging a new counsel and on his prayer, the Court granted him time, fixing the matter on 01.10.2018 for cross-objection/argument/order. On 01.10.2018, the new engaged counsel submitted application that the petitioner desired to communicate with her newly engaged advocate to conduct the said matter before the Tribunal and that prayed for necessary order. However, the Tribunal rejected the same and fixed, 01.11.2018 for necessary order.

11. On 01.11.2018, the petitioner remained absent before the Tribunal and the counsel for the petitioner prayed for adjournment of the matter as the proceedee was suffering from medical ailment which the Tribunal considered and fixed on 14.12.2018 for cross-objection, argument and order.

12. On 14.12.2018, the petitioner remained absent but the counsel for the petitioner prayed for another date which was rejected and the matter was fixed on 21.12.2018 for necessary order.

13. On 21.12.2018, the petitioner remained absent before the Tribunal without steps and even on calling by name.



14. Accordingly, the Tribunal passed the impugned opinion on the basis of the documents she submitted along with her written statement.

15. While considering the matter, the learned Tribunal observed that the matter was fixed for cross examination and hearing since 08.08.2016 and sufficient opportunity was given to the present petitioner/proceedee but the proceedee concerned on various pretext dragged her case and finally the opinion/final order/judgment was passed on 21.12.2018.

16. The main contention of the petitioner herein is that she lost the contact number of her counsel and the case number written in a small piece of paper while working in a brick factory and that she could not contact her engaged counsel to know the dates so fixed. Petitioner stated that she was not aware about rejection of her prayer on 14.12.2018 and fixing of the matter on 21.12.2018, as she lost the contact number of her engaged counsel.

17. Petitioner stated that on 30.03.2019, she personally met her engaged counsel and came to know about the impugned order dated 21.12.2018 passed in F.T. Case No. BNGN/FT/Case No. 936/2009 declaring her to be a foreigner of the stream after 25.03.1971 and after obtaining the certified copy of the said order dated 21.12.2018 through her engaged counsel filed the present petition on 26.11.2019.

18. Petitioner stated that her case before the Tribunal was not represented properly for which the impugned opinion dated 21.12.2018 was passed and had her case been presented well before the Tribunal, the adverse opinion would not have been passed against her by the concerned Tribunal on 21.12.2018.

19. Hence, the petitioner has prayed to quash the impugned opinion dated 21.12.2018 passed by the learned Member, Foreigners Tribunal No. 1, Bongaigaon in F.T. Case No. BNGN/FT/Case No. 936/2009 and to remand her case back to the concerned Foreigners Tribunal enabling her to contest the matter accordingly.

20. Heard the submissions of the learned counsels for the parties.

21. From the records, we have seen that the petitioner was present on 09.01.2017, 29.04.2017, 17.07.2017, 18.09.2017, 27.11.2017, 22.01.2018, 03.05.2018, 13.06.2018 and 09.08.2018. Though, she was absent on 01.10.2018, 01.11.2018 and 14.12.2018, she was represented by her engaged counsel.

22. On 14.12.2018, her engaged counsel submitted an application for fixing of the case on



another date which was rejected by the learned Tribunal and was fixed on 21.12.2018 for necessary order. Petitioner stated that she was not aware of rejection of the application of her counsel dated 14.12.2018 as she lost the contact number of her counsel. Consequently, the petitioner was also not aware of the fixing of the said case before the Tribunal for necessary order on 21.12.2018, and also about the impugned order dated 21.12.2018 which she could come to know when she met her engaged counsel on 03.03.2019.

23. We have seen that the petitioner has already submitted her written statement, relevant documents, evidence-in-affidavit before the Tribunal and the matter was fixed for cross examination, argument and order of the case.

24. After hearing the learned counsels for the parties and considering the entire aspect of the matter, we are of the opinion that the petitioner is entitled for a chance to prove her citizenship. For that purpose, we propose to remand the concerned F.T. Case No. BNGN/FT/Case No. 936/2009 back to the learned Member, Foreigners Tribunal No. 1, Bongaigaon for necessary consideration of the case from the stage of cross objection.

25. Consequently, the impugned opinion/final order/judgment dated 21.12.2018 passed by the learned Member, Foreigners' Tribunal No.1, Bongaigaon in F.T. Case No. BNGN/FT/Case No. 936/2009 is set aside and quashed.

26. We accordingly direct the present petitioner/the proceedee concerned, namely, Mustt. Adori Khatun, daughter of late Sohar Ali, wife of Md. Nizamuddin to appear before the learned Member, Foreigners' Tribunal No. 1, Bongaigaon in said in F.T. Case No. BNGN/FT/Case No. 936/2009 [arising out of Ref. IM(D)T Case No. 136/2003], within a period of six weeks along with the certified copy of this order and on the date of her said appearance in said F.T. Case No. BNGN/FT/Case No. 936/2009 as directed above, the petitioner shall appear for the purpose of her cross objection in the said F.T. Case. The learned Member, Foreigners' Tribunal No. 1, Bongaigaon accordingly, shall consider the matter enabling the petitioner to adduce evidence in support of her claim and/or to discharge her burden as envisaged under Section 9 of the Foreigners' Act 1946.

27. Since this order has been passed in presence of the learned counsel for the petitioner no formal notice need to be issued to the petitioner in said F.T. Case No. BNGN/FT/Case No. 936/2009.

28. It is made clear that failure on the part of the petitioner to appear before the said



Foreigners Tribunal No. 1, Bongaigaon in said F.T. Case No. BNGN/FT/Case No. 936/2009, as directed above on the dates so fixed by the learned Member, Foreigners' Tribunal No. 1, Bongaigaon in the said F.T. Case, the earlier opinion/final order/judgment dated 21.12.2018 passed by the learned Member, Foreigners' Tribunal No.1, Bongaigaon in said F.T. Case No. BNGN/FT/Case No. 936/2009 shall stand automatically revived.

29. With the above observation and direction, this writ petition stands disposed of.

30. Registry shall return the case record of F.T. Case No. BNGN/FT/Case No. 936/2009 to the learned Member, Foreigners' Tribunal No. 1, Bongaigaon forthwith along with a copy of this order.

JUDGE

JUDGE

24.07.23
Comparing Assistant

CERTIFIED TO BE TRUE COPY

Administrative Officer (Judicial)
Copying Section
Gazette High Court
Authorized O/S 76, Act 1, 1872