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IN THE FOREIGNERS TRIBUNAL NO.-1, BONGAIGAON



BNGN/FT/ 936/09

(REF.IM(D)T CASE NO.136/03)

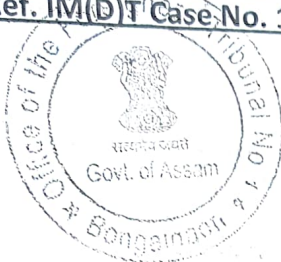
SATE OF ASSAM

VS

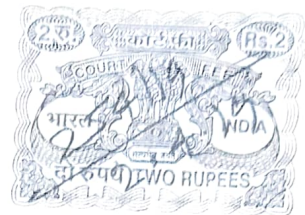
MUSSTT. ADORI KHATUN

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U.D.A., F.T. No. 1, Bongaigaon
Authorized u/s 78 Act. 1 of 1872

BEFORE THE FOREIGNERS' TRIBUNAL, NO.1 BONGAIGAON, ASSAM**BNGN/FT /Case No. 936/09****(Ref. IM(D)T Case No. 136/03****Present**

Shri Bikas Kumar, M.Sc. LL.B.
Member, Foreigners' Tribunal No.1,
Bongaigaon, Assam.

**State of Assam****-VS-****...Petitioner****Musstt. Adori Khatun.****D/O- Lt. Sahar Ali.****W/O- Md. Nizamuddin.****.....O.P./Proceedee****Appearance****Advocate for the State- Nil****Mr. Md. B. Ali. Ahmed, D.A. Rahim and A. Kr. Prasad.****Advocates for the Opposite Party****Date of evidence- 08/08/16****Date of Judgment- 21/12/18.****OPINION/FINAL ORDER/JUDGEMENT**

Originally this case was forwarded by the Superintendent of Police (B) (S.P.(B) for short), Bongaigaon under IM(D)T Act, vide IM(D)T reference Case No. **136/03** expressing doubt about the nationality of the Opposite Party (OP for short) namely Musstt. Adori Khatun, D/O- Lt. Sahar Ali, W/O- Md. Nizamuddin, Vill.- I with a prayer to decide as to whether the O.P./Proceedee and her relatives are or not illegal migrants, as they were suspected foreign nationals who entered into after 25th March of 1971 illegally. Subsequently, in view of Govt. W.T. Message No. 101/2005/116 dated 19/07/05 this case was transferred to this Tribunal for decision as per provision of the Foreigners' Act, 1946.

It appears from the case record that initially, notice was issued in the name of Musstt. Adori Khatun to show cause as to why she is not to be declared as foreigner under the Foreigners Act, 1946. On perusal of the C/R it is found that the case was fixed for cross examination and hearing since 08/08/16. Sufficient opportunity given to the O.P. but the O.P. taking this and the plea only to dragging her case. Hence an opinion/Final Order/Judgment passed.

Now, the point for determination is as to whether the O.P./Proceedee Musstt. Adori Khatun is "citizens" of India or "foreigners" within the meaning of the expression 'foreigner' as defined in the Foreigners' Act 1946.

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As per provision of Section 9 of the Foreigners' Act, 1946, the onus of proving that the suspects (the OPs in the instant case) is citizen of India and not "foreigners" lie upon the suspects (the Ops) notwithstanding anything contained in the Indian Evidence Act, 1872(1 of 1972). Now, let us find out as to how far the O.P./Proceedee could discharge *her* burden to prove that *she* is not foreigner.

I have minutely perused the records and the materials available thereon. **Ext- A** is a Photocopy of NRC details of 1951 in the name of Saher Ali. **Ext-B** is a photocopy of voter list of 1965 in the name of Rostom Ali and four others. **Ext-C** is a photocopy of 1970 voter list in the name of Rostom Ali and four others. **Ext-D** is a photocopy of 1997 voter list in the name of Nizam Uddin and Aduri Bibi. **Ext-E** is a photocopy of 2010 voter list in the name of Nizamuddin and Aduri Bibi. **Ext-F** is a photocopy of Electoral Roll of 2011 in the name of Nizamuddin and Aduri Bibi. **Ext-G** is Photocopy of Elector Photo Identity Card in the name of Aduri Bibi. **Ext-H** is a Photocopy of Gaon Panchayat Certificate in the name of Aduri Bibi. **Ext-I** is a photocopy of Elector Photo Identity Card in the name of Nizamuddin. But she failed to produce the original or certified documents in support of her claim of Nationality or Citizenship of India. Mere filing of documents or marking of documents as exhibits by the O.P./Proceedee is not enough. Not only the documents but also the contents thereof would have to be proved and relevancy established as per mandate of Section 9 of the Foreigners Act, 1946 as explained by the Hon'ble Supreme Court in Sarbananda Sonowal -vs- Union of India reported in (2005) 5 SCC 665. It therefore reveals from the case record that the O.P./Proceedee herein has absolutely failed to discharge her mandatory burden to prove and established that she is not a foreigner as envisaged U/S 9 of the Foreigners' Act 1946 (As amended upto date). The reference thus stands unassailed and unrebutted and accordingly it is allowed.

As such, it is evident from the case record that more than sufficient opportunities have been afforded to the O.P./Proceedee to contest and to make *her* defence in the proceedings. However, the O.P./Proceedee failed to answer the proceeding inspite of such opportunities given in a liberal manner.

I considered it relevant for mention herein that as per Sec 3 (8) this Foreigners' Tribunal Order 1964, it provides that the Foreigners Tribunal shall give the O.P./Proceedee ten days time to give reply to the show cause and further ten days time to produce documents in support of *her* case.

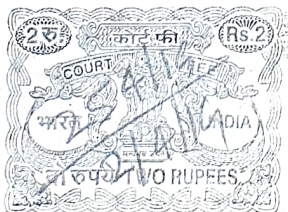
Apparently, in the case at hand even since the date of *her* appearance with the documents and arguments till the last date in the case, the O.P./Proceedee has been granted more than sixty days time for filing and submission of documents and argument, instead of ten days time as prescribed by the aforesaid Foreigner' Order 1964 (As amended upto date).

In view of the objection of the statute as aforesaid and also pursuant to the direction of the Hon'ble Gauhati High Court reported in (2003) 1 GLT 809 (F.B) it thus appears to me that despite having reasonable opportunities, the O.P./Proceedee has failed to present and submission of documents and arguments within the time as prescribed her so far do. As even that found absent. As such having no alternative, I am therefore constrained to take up the case for passing the final order. Accordingly, the instant case is decided on contest against the O.P. /Proceedee.

Considering the matter in entirety, I therefore had and give my opinion that the O.P./Proceedee of this case namely Musstt. Adori Khatun, D/O- Lt. Sahar Ali, W/O- Md. Nizamuddin, Vill.- No. 6 Jamdoha, P.S.-Manikpur (Gerukabari OP) and Dist. of Bongaigaon, Assam.

The O.P./Proceedee is declared as foreigner of the stream post 1971. The Superintendent of Police (B), Bongaigaon is advised to take all necessary steps to apprehend the O.P./Proceedee and to keep *her* in Detention Camp till *her* deportation/Push back in accordance with procedure. However it is also directed that the name of the O.P./ Proceedee be deleted/struck off from all beneficial schemes, if any enjoyed under Govt. schemes,

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are forth with curtail-able including deletion the opp's names from all voter enrollments. The Reference case against the O.P./Proceedee is answered in positive. In the result the O.P./Proceedee, in my considered opinion, is a foreigner of the stream post 1971.

Further, S.P. (B), Bongaigaon is hereby advised to make an enquiry against the brothers, sisters and other family members of the declared foreigner namely Musstt. Adori Khatun.

The Order containing the opinion of this Tribunal is delivered under my hand and seal on this 21st day of December/2018.

Send the copy of the final Order to all concerned Authorities.

Dictated and corrected by me,

Member,
Foreigners Tribunal, No. 1,
Bongaigaon.

Dated 25/01/2019

Memo No.BFT/08/07-18/2519 - A

Copy to:-

1. The Deputy Commissioner, Bongaigaon.
2. The Superintendent of Police (B), Bongaigaon for N/A.

Sd/- Illegible .
Member,
Foreigners Tribunal, No. 1,
Bongaigaon.

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