

GAHC010012782019



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

Case No. : WP(C)/1216/2019

ASMINA BEGUM @ ASPINA
W/O MD. HUSEN ALI
R/O VILL- FURHANIATI
P.O. LETERIPAR BAZAR, P.S. JURIA
DIST.NAGAON, ASSAM,
PIN - 782124.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS, SHASTRI BHAWAN,
TILAK MARG, NEW DELHI- 110001.

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

HOME DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE ELECTION COMMISSIONER OF INDIA

THROUGH ITS SECRETARY
NIRBACHAN SADAN
ASHOKA ROAD
NEW DELHI-110001.

4:THE STATE CO-ORDINATOR

NATIONAL REGISTER OF CITIZENS (NRC)

ASSAM
FIRST FLOOR
ACHYUT PLAZA
G.S. ROAD

BHANGAGARH
GUWAHATI - 781005.

5:THE DEPUTY COMMISSIONER

NAGAON
DIST. NAGAON
ASSAM
PIN -782002.

6:THE SUPERINTENDENT OF POLICE (B)

NAGAON
DIST. NAGAON
ASSAM
PIN - 782002

Advocate for the Petitioner : MR. J A AHMED

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

- BEFORE -

HON'BLE MR. JUSTICE N. KOTISWAR SINGH

HON'BLE MRS. JUSTICE MALASRI NANDI

:: ORDER ::

03.12.2021

[N. Kotiswar Singh, J]

Heard Mr. A.M. Hassan, learned counsel for the petitioner. Also heard Ms. A. Verma, learned Special Counsel, Foreigners Tribunal appearing for respondent Nos.2 & 6 and Mr. A.I. Ali, learned Standing Counsel, ECI for respondent No.3. Ms. L. Devi, learned counsel appears on behalf of Mr. R.K.D. Choudhury, learned ASGI for respondent No.1; Ms. Devi also appears for respondent No.4 as the learned Standing Counsel, NRC and Ms. K. Phukan, learned Govt. Advocate, Assam for respondent No.5.

2. Considering the nature of the case, we are of the view that the present petition can be disposed of at this stage without issuing any formal notice to the respondents.
3. In this petition, the petitioner has challenged the impugned order dated 01.10.2018 passed by the learned Member, Foreigners Tribunal, 4th, Nagaon, Juria (Assam) in F.T. Case No. 413/16 [Police Reference D Case No.-2790/98] by which the petitioner was declared a foreigner without any reference to the period during which she was alleged to have come to India.
4. The relevant portion of the impugned order dated 01.10.2018 reads as follows
“(11) In result the Tribunal opined that the proceedee in the reference case namely ASPINA, W/O Husen, vill- Furhaniati, P.S.- Juria, Dist- Nagaon, Assam is not a citizen of India under the provision of The Foreigners Act, 1946 read with section 2(a) of the said Act and also the provision of citizenship Act, 1955 as amended in 2005.

(12) The reference thus stands disposed of on contest in terms of above discussion in favour of State. In the result proceedee declared as a foreigner.”
5. Learned counsel for the petitioner submits that a person cannot be declared a foreigner generally. Such opinion must have some reference to the period of entry in India, also in terms of the reference made by the Referral authority.
6. In the present case, it has been submitted by the learned counsel for the petitioner that, first of all, the learned Tribunal has not made any reference to the period of entry as to whether it was between 01.01.1966 and on or before 25.03.1971 or after 25.03.1971 as the period of entry will have a bearing on the nature of the right of a person/foreigner will have.
7. It has been further submitted by the learned counsel for the petitioner that perusal of the verification report, a copy of which has been annexed as Annexure-1 to the writ petition, would show that the column for the period of migration has not been filled up. Thus, there is no indication as to when the petitioner was found to have entered into Assam as required to be mentioned in the format. Accordingly, it has been submitted that neither any proper investigation was carried out nor a proper reference has been made by the referral authority to the Tribunal.

8. As regards the non-mentioning of the period of entry by the learned Foreigners Tribunal while giving its opinion, we are of the view that non-mentioning of the period of entry by the alleged foreigners would be fatal for the reason that as provided under Section 6A(2) of the Citizenship Act, 1955, subject to the provisions of sub-sections (6) and (7), all those persons of Indian origin who came Assam from the specified territory before 01.01.1966 and who have been ordinarily resident in Assam since the dates of their entry to Assam shall be deemed to be citizens of India as from 01.01.1966. Thus, those persons even if illegally entered India but had entered before 01.01.1966 and had been ordinarily resident of Assam, will not be termed as foreigners but Indian citizens. However, as provided under Section 6A(3), those persons who came to Assam on or after 01.01.1966 but before 25.03.1971 from the specified territory and who had been ordinarily resident of Assam, and have been detected as foreigners by the Tribunal, will not be liable to be deported and have a right to be registered as citizens of India provided, they register themselves after being detected as foreigners by the Tribunal with the concerned registering authority and on expiry of 10(ten) years thereafter, will be treated as Indian citizens. However, those who came to Assam after 25.03.1971 will be foreigners, plain and simple, and will not be entitled to any such benefits.

9. Therefore, it was necessary on the part of the Tribunal to give the opinion with reference to the time when the petitioner had allegedly entered India (Assam). However, the same has not been done as clearly evident from the opinion and as such, we are of the view that the said opinion cannot be sustained in law and accordingly, requires to be remitted to the Tribunal for fresh consideration.

10. As regards the contention of the petitioner that neither proper enquiry was made nor proper reference was made to the Tribunal, we are of the view that the petitioner can raise all these issues before the Tribunal and the importance of these processes has also emphasized by the Full Bench of this Court in ***State of Assam and Ors. Vs. Moslem Mondal and Ors. [2013 (1) GLT 809]***.

In ***Moslem Mondal*** (supra), the Full Bench held that such reference by the referral authority cannot be mechanical. The referral authority has to apply his mind on the materials collected by the investigating officer during investigation and make the reference on being satisfied

that there are grounds of making such reference. The referral authority, however, need not pass a detailed order recording his satisfaction. An order agreeing with the investigation would suffice. The referral authority also while making the reference shall produce all the materials collected during the investigation before Tribunal, as the Tribunal is required prima facie to satisfy itself about the existence of the main grounds before issuing notice to the proceedee.

Para No.98 of ***Moslem Mondal*** (supra) reads as follows.

“98. The reference by the referral authority also cannot be mechanical. The referral authority has to apply his mind on the materials collected by the investigating officer during investigation and make the reference on being satisfied that there are grounds for making such reference. The referral authority, however, need not pass a detailed order recording his satisfaction. An order agreeing with the investigation would suffice. The referral authority also, while making the reference, shall produce all the materials collected during investigation before the Tribunal, as the Tribunal is required prima facie to satisfy itself about the existence of the main grounds before issuing the notice to the proceedee.”

11. From the above, it is clear that there has to be a proper enquiry before the reference is made. Reference can only be made on the basis of the materials on record and the Tribunal is also required to prima facie satisfy itself about the existence of the main ground before issuing notice to the proceedee.

However, we are not making any further observation at this stage as the petitioner would at liberty to raise all such objections before the Tribunal as mentioned above.

12. Accordingly, the present petition is allowed by setting aside the impugned order dated 01.10.2018 passed by the learned Member, Foreigners Tribunal, 4th, Nagaon, Juria (Assam) in FT. Case No. 413/16 [Police Reference D Case No.2790/98].

13. Petitioner will appear before the aforesaid Foreigners Tribunal on or before **04.01.2022** and the Tribunal after hearing the petitioner again will pass a fresh opinion in accordance with law.

14. Since the citizenship of the petitioner is under cloud, he will continue to remain on bail subject to the condition that he will appear before the Superintendent of Police (Border), Nagaon within 15 (fifteen) days and furnish a bail bond of Rs.5,000/- (Rupees five thousand) with one local surety of the like amount to the satisfaction of the said authority. On such appearance, the Superintendent of Police (Border) Nagaon may obtain necessary information and documentation as required under the rules from the petitioner for securing his presence and shall also take steps for capturing the finger prints and biometrics of the iris of the petitioner, if so advised.

The petitioner shall not leave the jurisdiction of Nagaon District without giving details of the place of destination and her place of stay to the Superintendent of Police (Border), Nagaon.

15. With the above observations and directions, the present petition is disposed of.

JUDGE

JUDGE

Comparing Assistant