

GAHC010272272019



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

Case No. : WP(C)/8284/2019

RAHIMA KHATUN
D/O. LT. NUR MOHAMMED W/O. PIAR ALI KHAN, P.O. AND P.S. DHUBRI,
WARD NO.16, DIST. DHUBRI, ASSAM, PIN-783301.

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN-
110001.

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF HOME
DISPUR GUWAHATI-781006.

3:THE CHIEF ELECTION COMMISSIONER
ELECTION COMMISSION OF INDIA
ASHOKA ROAD NEW DELHI-01.

4:THE STATE CO-ORDINATOR
NRC ASSAM
1ST FLOOR ACHYUT PLAZA
G.S. ROAD BHANGAGARH
GUWAHATI-05 ASSAM.

5:THE DY. COMMISSIONER
DHUBRI.

6:THE SUPDT. OF POLICE (B)
DHUBRI
ASSAM.

7:THE OFFICER IN CHARGE

DHUBRI POLICE STATION
DIST. DHUBRI
ASSAM

Advocate for the Petitioner : MR. P N GOSWAMI

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

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

:: O R D E R ::

08.04.2021

[N. Kotiswar Singh, J]

Heard Mr. D. Gogoi, learned counsel for the petitioner. Also heard Mr. P. S. Bhattacharjee, learned Central Government Counsel appearing for respondent No.1; Mr. J. Payeng, learned Special Counsel, FT for respondent Nos.2, 5 and 6; Ms. B. Das, learned Standing Counsel, ECI for respondent No.3 and Mr. P. S. Lahkar, learned counsel for respondent No.4.

2. The present petition has been filed by the petitioner against the *ex-parte* order dated 09.06.2016 passed by the learned Member, Foreigners Tribunal No.1, Dhubri in F.T. Case No. 1158/D/2011 [Ref. Case No. IM(D)T/R/95/98] by which the petitioner was declared as an illegal migrant of post 1971 stream.

3. Though notice was served, according to the petitioner, upon receipt of notice from the Foreigners Tribunal, the son of the petitioner appeared on her behalf without her knowledge. But, unfortunately, the petitioner's son neglected to appear before the Tribunal on various dates fixed by the Tribunal resulting in passing of the *ex-parte* order.

4. We have perused the records.

5. From the records, it is evident that the learned Tribunal passed the order without hearing the petitioner.

6. It is to be remembered that citizenship is one of the most important rights of a person.

By virtue of citizenship, one becomes a member of a sovereign country and becomes entitled to various rights and privileges granted by law in the country and, as such, if any question arises about citizenship of a person, in our opinion, the same should be adjudicated as far as possible on the basis of merit and on hearing the person concerned.

7. In view of above, we are inclined to remand the matter to the learned Foreigners Tribunal No.1, Dhubri for reconsideration of the issue as to whether the petitioner is a foreigner or not, for which, the petitioner will appear before the aforesaid Foreigners Tribunal on or before 05.05.2021.

8. Accordingly, the present petition is allowed by setting aside the impugned order dated 09.06.2016 passed by the learned Member, Foreigners Tribunal No. 1, Dhubri, Assam in F.T. Case No. 1158/D/2011 [Ref. Case No. IM(D)T/R/95/98].

9. However, since the petitioner's citizenship is under cloud as the petitioner has been already declared as a foreigner by the aforesaid Foreigners Tribunal, she will appear the petitioner will appear before the Superintendent of Police (Border), Dhubri within 15 (fifteen) days from today. 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 whereafter she shall be allowed to remain on bail. The concerned Superintendent of Police (Border) may obtain necessary information and documentation as required under the rules from the petitioner for securing her presence. The concerned Superintendent of Police (Border) shall also take steps for capturing the finger prints and biometrics of the iris of the petitioner, if so advised.

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

10. Records be remitted forthwith to the concerned Foreigners Tribunal.

JUDGE

JUDGE

Comparing Assistant