

(2021) 11 GAU CK 0041

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 5043 Of 2019

Ashrabala Bhadra

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 24-11-2021

Acts Referred:

Citation : (2021) 11 GAU CK 0041

Hon'ble Judges : N. Kotiswar Singh, J; Malasri Nandi, J

Bench : Division Bench

Advocate : N. Sarkar, P.K. Basu, P.S. Lahkar, A. Verma, A.I. Ali, K. Phukan

Final Decision : Disposed Of

Judgement

1. Heard Mr. N. Sarkar, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned counsel appearing on behalf of Mr. R.K. Dev Choudhury, learned Asstt. Solicitor General of India for the respondent No.1 as well as appearing as standing counsel NRC, for respondent No.4; Ms. A. Verma, learned special counsel, FT, appearing for respondent Nos.3, 6 and 7; Mr. A.I. Ali, learned standing counsel, ECI, appearing for respondent No.2 and Ms. K. Phukan, learned Junior Government Advocate, Assam, appearing for respondent No.5.

2. Considering the nature of this case, we are of the view that the matter can be remanded to the learned Foreigners' Tribunal for a fresh reconsideration.

3. The present petition has been filed challenging the opinion of the learned Tribunal dated 17.12.2018 passed by the learned Member, Foreigners Tribunal, Dhemaji, Assam, in F.T. Case No.1275/2007 by which the petitioner was declared a foreigner of post 1971 stream.

4. It appears that though the petitioner had filed written statement along with documents and also adduced evidence of herself and was cross-examined, on subsequent dates fixed on 27.09.2018, 23.10.2018, 22.11.2018 and 03.12.2018, the petitioner could not appear before the Tribunal resulting in passing of the

impugned order without any further hearing of the petitioner.

5. In this regard, learned counsel for the petitioner has submitted that the petitioner could not appear before the learned Tribunal on the dates mentioned above because of the reasons mentioned in paragraphs 5 and 6 of this petition as she was seeking advice to prove the genuineness of the documents by sending notice to the issuing authorities i.e. to the Electoral Registration Officer, Udalguri and Gaonburah of Balisiha Habi of Rowta, Udalguri with endorsement of the learned Member, Foreigners' Tribunal, Dhemaji. Thus, the petitioner was attempting to procure presence of the officials to prove certain documents, which could have relevance to the case of the petitioner. Unfortunately, the matter was proceeded as mentioned above and the petitioner was declared a foreigner.

6. We are of the view that considering the materials on record and the fact that the petitioner was making attempts to get material evidence and also by way of examining the concerned officials, the petitioner may be given another opportunity to appear before the Tribunal to adduce evidence in support of her claim that she is not a foreigner but an Indian.

7. Accordingly, we set aside the impugned order dated 17.12.2018 passed by the learned Member, Foreigners Tribunal, Dhemaji, Assam, in F.T. Case No.1275/2007 and remand the matter to the learned Tribunal for a fresh reconsideration by allowing the petitioner to adduce evidence, and also by calling such officials through the Tribunal as may be necessary to prove her case, for which the petitioner will appear before the learned Tribunal on or before 24.12.2021 and the learned Tribunal will proceed with the matter as per the observations made above, and in accordance with law.

8. With the above observations and directions, the petition stands disposed of.