
(2013) 08 GAU CK 0026
In the Gauhati High Court
Case No : Writ Petition (C) No. 4345 of 2013

Banu Das

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 4 GLT 617

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : Alhajj Inam Uddin, Mr. M.A. Laskar, Mrs. R. Momtaz and Mrs. S.N. Khandakar, for the Appellant;

Judgement

Biplab Kumar Sharma, J.—Heard Mr. I. Uddin, learned counsel for the petitioner. Also heard Mr. N. Upadhyay, learned State Counsel and Mr. M. Bhagawati, learned CGC.

The petitioner, who has been declared to be a foreigner within the stream of 1.1.1966 to 25.6.1971 by order dated 30.3.1998 passed by the Foreigners Tribunal, Nagaon in F.T. Case No. 1105/98 has filed this writ petition for a direction to the respondents to register her name as foreigner. Thus the prayer made in this writ petition is after more than 15 years of declaring the petitioner to be a foreigner within the stream of 1.1.1966 to 25.6.1971 as against the time limit of 30 days extendable by another 60 days.

As per the Full Bench decision of this Court reported in *The State of Assam and Others Vs. Moslem Mondal and Others*, such time limit can be extended by the registering authority only under very exceptional circumstances preventing the applicant from filing the application due to reasons beyond his control, for which the reasons have to be recorded by the registering authority. In paragraph-111 or the judgment, it has been observed thus:

111. 1956 Rules as well as 2009 Rules, as noticed above, provide the initial time limit for filing application for registration, i.e., 1 (one) month, which is

extendable by another 60 days by the registering authority. Though there is no time limit prescribed in Section 6A of the 1955 Act for filing such application, having regard to the purpose for which Section 6A of 1955 Act has been enacted, it also cannot be said that the fixation of the time limit for filing the application has no bearing on the purpose sought to be achieved by such enactment. However, such time limit can be extended by the registering authority, only under very exceptional circumstances preventing the applicant from filing the application due to reasons beyond his control, for which the reasons have to be recorded by the registering authority. But such extension of time cannot also be for an indefinite period of time, having regard to the object of the enactment of Section 6A of the 1955 Act.

2. A person who does not register within the time limit fixed or within the time limit that may be extended by the registering authority, is liable to be deported from India as he is admittedly a foreigner and he has not acquired the right of a citizen of India as has been acquired by a person of Indian origin who came to Assam from the specified territory prior to 1.1.1966, by virtue of the deeming provision in sub-section (2) of Section 6A of the 1955 Act. The decision of the Apex Court in National Human Rights Commission (supra) on which Mr. Das, learned Sr. counsel has placed reliance, does not support the contention that a person of Indian origin who came to Assam from specified territory between 1.1.1966 to 25.6.1971 would continue to be the citizen of India despite non-filing of application for registration. In the said case, the Apex Court had interfered with the quit notices and ultimatum issued by a Student organization, on the ground that they do not have the authority to issue the same and it tantamount to threat to the life and liberty of each and every person of Chakma tribe. The Apex Court had also directed not to evict or remove the Chakmas from their occupation on the ground that he is not a citizen of India until the competent authority takes a decision on the application filed by them for registration under the provisions of the 1955 Act.

3. Mr. I. Uddin, learned counsel for the petitioner prays for a liberty to the registering authority by the petitioner for registering her name upon showing the reasons for non-registering for all these years.

In that view of the matter, this writ petition is disposed of granting liberty to the petitioner to approach the registering authority for registration of her name in terms of the declaration made by the Foreigners Tribunal vide judgment and order dated 30.3.1998 passed in F.T. Case No. 1105/1998. While considering the case of the petitioner, the registering authority shall take note of the aforesaid observations made by this Court in Moslem Mondal (supra).

Detention and deportation of the petitioner shall be subject to the outcome of the aforesaid exercise.