

(2021) 07 GAU CK 0078

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 2434 Of 2020

Golapi Begum

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 15-07-2021

Acts Referred:

Citizenship Rules, 2009 — Rule 19
Foreigners' Act, 1946 — Section 3
Citizenship Act, 1995 — Section 6A(3)

Citation : (2021) 07 GAU CK 0078

Hon'ble Judges : N. Kotiswar Singh, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : H R A Choudhury

Final Decision : Disposed Of

Judgement

1. Heard Mr. A. M. Ahmed, learned counsel for the petitioner.
2. Also heard Mr. S.C. Keyal, learned Special Counsel, FT represents respondent Nos. 2, 3 and 6; Ms. R. Devi, learned Central Government Counsel appearing on behalf of the respondent No. 1; Mr. A. Bhuyan, learned Standing Counsel, ECI appears for the respondent No.4 and Ms. L. Devi, learned Standing Counsel, NRC for respondent No.5.
3. This writ petition has been filed by the petitioner, namely Golapi Begum, challenging the opinion dated 29.11.2019 passed by the Foreigners Tribunal, Baksa, Tamulpur, Assam in F.T. Case No. 126/Baksa/2017 [corresponding to S.P. (B) BaksaReference F.T. No. 51/2007].
4. By the said opinion, the Foreigners Tribunal, Baksa, Tamulpur held that the petitioner was not successful in proving her citizenship and that she had entered India illegally after 24.03.1971 from the specified territory. The

reference was disposed of by holding that the proceedee/opposite party is a foreigner.

5. This Court while issuing notice by order dated 18.06.2020, in the interim, directed that the petitioner should not be taken into custody and deported from India subject to payment of Rs. 5,000/- as bail bond. It was also directed that her Biometrics and fingerprints be recorded by the Superintendent of Police (Border), Baksa at the time of executing the bail bond. The LCR from the concerned Tribunal was called for and the same has been received. The matter is taken up for disposal today.

6. We have heard the learned counsels for the parties and have also perused the materials available on record.

7. Section 3 of the Foreigners Act, 1946 empowers the Central Government to make Orders dealing with foreigners. In exercise of powers conferred under Section 3 of the aforesaid Act, Foreigners (Tribunals for Assam) Order, 2006 was framed. Order 2 deals with Constitution of Tribunals. As per Order 2 (1), Central Government may by order refer the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946 to a Tribunal to be constituted for the purpose for its opinion.

8. We have been informed at the Bar that the power of the Central Government to make reference in terms of Order 2(1) has since been delegated to the concerned Superintendents of Police.

9. Perusal of the records called for reveal that by memo No. BSA/B/06/07/314-37 dated 31.08.2007, the reference was made by the Superintendent

of Police (Border), Baksa district on the basis of investigation and enquiry that the petitioner along with other family members are foreigners coming into Assam after 01.01.1966 and before 25.03.1971. It is on the basis of this reference, the Tribunal registered a case and proceeded to answer the reference made. The extract of the reference is reproduced herein below:

â??F.T. Case No. 51/07

OFFICE OF THE SUPERINTENDENT OF POLICE (B) BAKSA DIST

CAMP : BARAMA

Memo No: BSA/B/06/07/314-37 Date: 31/08/07 126/BAKSA/2017

Order reference M/S 2 (i) (A) under foreigners (Tribunal) order 1963 against suspected foreigners MusstGolapi Begum, W/O MdFazalAliVillN.K.

Darranga P.S. Tamulpur in the district of Baksa

I have gone through the Enquiry report of suspected Foreigners MussttGolapi Begum, W/O MdFazalAliVillNKDarranga suspected by SI (B) Akan

Ch. Medhi during enquiry the suspect MussttGolapi Begum appears to be a foreigners, who entered into Assam after 1st January 1966 and before

25th March 1971.

Under the circumstances I Sri P.K. Dutta A.P.S. Superintendent of Police (B) Baksa hereby forward the case to foreigners Tribunal, Nalbari for

favour of opinion whether the suspect MussttGolapi Begum along with his family members mentioned in col No 13 are the

foreigners coming into Assam, after 1st January 1966 and before 25th March, 1971. The interrogation from along with the statement of witnesses etc

are sent herewith for favour of perusal.

Superintendent of Police (B)

Baksa (BTAD) Assam

10. From the reference, it is clear that the investigations conducted by the police have revealed that the petitioner and her family members are

foreigners who came into Assam after 01.01.1966 and before 25.03.1971 and the same was referred to the Tribunal for its opinion.

11. The Tribunal entered into the reference on the grounds and reasons mentioned therein. It arrived at the conclusion recorded in Paragraph-18 of

the opinion that the petitioner had entered into India illegally after 24.03.1971 from the specified territory and the reference was disposed of by holding

that the proceedee (petitioner) is a foreigner.

12. In terms of Order 2(1), the Tribunal gets its jurisdiction to render its opinion only when any reference is made to it under Order of the Foreigners

(Tribunals for Assam) Order, 2006. Without a reference being made, Tribunal cannot exercise its jurisdiction to opine that a person is or is not a

foreigner. It is only when a reference is made as above that the Tribunal assumes jurisdiction to render its opinion. It has further been held by this

Court that the Tribunal will have to confine its opinion to the terms of the reference made to it and not go beyond the same. Admittedly, in this case,

reference was that petitioner was a foreigner who had illegally entered into India (Assam) from the specified territory during the period 01.01.1966 to 24.03.1971. The Tribunal was required to answer the reference either in favour of the State or in favour of the proceedee. If the reference was to be answered in favour of the State and it was answered rightly so by the Tribunal, the natural corollary would be that petitioner is a foreigner belonging to the 01.01.1966 to 24.03.1971 stream. Therefore, the view taken by the Tribunal that the Foreignersâ?? Act, 1946 or the Orders framed thereunder do not bind it to the terms of the reference is not correct. The Tribunal cannot suo motu assume jurisdiction to give an opinion which is not sought. No opinion was sought from the Tribunal as to whether the petitioner entered India after 24.03.1971 or not.

13. As such, though the reference made by the Superintendent of Police (Border), Baksa vide Memo No. BSA/B/06/07/314-37 dated 31.08.2007 against the petitioner was that he was a foreigner who entered into Assam after 01.01.1966 and before 25.03.1971, the Tribunal, however, rendered its opinion by holding that the petitioner entered India on or after 25.03.1971. The issue of the Foreignersâ?? Tribunal assuming jurisdiction beyond the reference has been held to be not permissible by this Court in Santosh Das Vs. Union of India reported in (2017) 2 GLT 1065 and in WP(C) No.1293/2021 [SonaKha @ Sona Khan vs. Union of India and Ors.] disposed of on 24.03.2021.

14. We have perused the judgments rendered by this Court and we are of the opinion that ratio laid down by the aforesaid judgments will be applicable in the present case. As discussed above, it is seen that though the reference was made by the Superintendent of Police (Border), Baksa for an opinion of the Foreignersâ?? Tribunal, that the petitioner is an illegal immigrant who entered India between 01.01.1966 and 25.03.1971, the Tribunal went beyond the reference and rendered its opinion that the petitioner and her family members are illegal immigrants who entered India after 25.03.1971, which is clearly impermissible in law.

15. Accordingly, we are of the view that the opinion dated 29.11.2019 impugned in the present proceedings rendered by Foreigners Tribunal, Baksa, Tamulpur in F.T. Case No. 126/Baksa/2017 holding that the petitioner is a foreigner after 25.03.1971 is beyond the reference made by the

Superintendent of Police (Border), Baksa vide Memo No. BSA/B/06/07/314-37 dated 31.08.2007 and thus, illegal.

16. We, therefore, interfere with and set aside the impugned opinion dated 29.11.2019 passed in F.T. Case No.126/Baksa/2017 and remand the matter

to the Foreigners Tribunal, Baksa, Tamulpur for a fresh decision in terms of the reference of Superintendent of Police (Border), Baksa district in F.T.

Case No.51/07 issued vide Memo No. BSA/B/06/07/314-37 dated 31.08.2007 made. The Foreignersâ?? Tribunal will hear the matter afresh and

thereafter, render a finding as to whether the petitioner entered India between 01.01.1966 and 25.03.1971 or not.

17. It is needless to say that in the event, the Foreignersâ?? Tribunal answers the reference in affirmative, the petitioner will be entitled to the

benefits of registration under Sub-section 3 of Section 6A of the Citizenship Act, 1995 read with Rule 19 of the Citizenship Rules, 2009.

18. The writ petition is accordingly disposed of in terms of the above.

19. LCR be immediately remitted to the Foreigners Tribunal, Baksa, Tamulpur.