
(2018) 08 GAU CK 0028
In the Gauhati High Court
Case No : Civil Writ Petition No. 3807 of 2018

Huran Nessa, Suran Nessa

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 29-08-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 114, 151, Order 9 Rule 13
Limitation Act, 1963 — Section 5
Constitution of India, 1950 — Article 226

Citation : (2018) 08 GAU CK 0028

Hon'ble Judges : ARUP KUMAR GOSWAMI , J;MANASH RANJAN PATHAK, J

Bench : Division Bench

Advocate : A. Hussain, I.H. Khan, A. Verma, G. Sarma, J. Payeng, A.I. Ali

Final Decision : Disposed Off

Judgement

A.K. Goswami, J.

1. Heard Mr. M.U. Mondal, learned counsel for the petitioners. Also heard Mr. J. Payeng, learned special standing counsel, Foreigners Tribunal,

appearing for respondent Nos.3, 5 and 6; Ms. G. Sarma, learned CGC appearing for respondent No.1; Mr. A.I. Ali, learned standing counsel, Election

Commission of India, appearing for respondent No.2 and Ms. A. Verma, learned standing counsel, NRC, appearing for respondent No.4.

2. The writ petition is filed by the petitioners, namely, Huran Nessa @ Suran Nessa, W/O Lt. Habibulla Sk. @ Habibur Rahman and Ajijul Sk. @

Ajijulla @ Ajijul Hoque, S/O Lt. Habibulla Sk. @ Habibur Rahman, challenging an order dated 20.03.1992 passed by the learned Member, Foreigners

Tribunal (2nd), Nagaon, in F.T. Case No.2013/1988 and for a direction to fresh consideration and disposal of the aforesaid F.T. Case No.2013/1988.

Alternatively, though not prayed for in the writ petition, at the very outset, Mr. Mondal submits that if direction is issued by this Court permitting them

to register themselves as foreigners within the period 01.01.1966 to 25.03.1971, their grievance will be suitably redressed.

3. The order dated 20.03.1992 reads as follows:-

â??This FT is referred by S.P. Nagaon to decide whether Habibur Rahman S/O Lt. Kalu Sheikh along with Suran Nessa (W) Azizul Hq(S) come

from E/Pak to Assam within 1966-25.3.71 and since then residing at village-Gorubandha, PS-Kaliabor, Nagaon. O.P. appeared on 21/6/90 with

advocate and filed W/S and claimed to be India. There after remained absent with out steps. Case proceeded ex parte. State examined Satya Naranya

Adhikari, S.I. Police, P.S. Samaguri who proved ext-1/2 and ext-2(1) â?" 2(2) and found O.P. to have come within 1966-25.3.71. Heard G.P. Held

ex-parte foreigners. Send copy.â??

4. The petitioners along with another son of Habibur Rahman @ Habibulla had filed a petition under Order 9 Rule 13 read with Section 151 and 114

CPC along with a petition for condonation of delay under Section 5 of the Limitation Act, 1963. These applications were also rejected by an order

dated 02.03.2015. However, the said order is not put to challenge before this Court.

5. It is pleaded that the petitioners were unaware about the proceeding in F.T. Case No.2013/1988 as they were not informed about the said case by

their husband/father during his lifetime. It is further stated that Habibulla Sk. @ Habibur Rahman expired on 27.12.2013 at B.P. Civil Hospital,

Nagaon. It is also stated that the father of the petitioners suffered a stroke and was suffering from paralysis from the month of July, 1990 and he had

lost his voice permanently. In the month of February, 2015 police started looking for the petitioners and this led the petitioners to make inquiries and

during such process they came to learn about the impugned order dated 20.03.1992. After coming to know about the said order dated 20.03.1992, the

application under Order 9 Rule 13 read with Section 151 and 114 CPC along with the application under Section 5 of the Limitation Act were filed.

6. We have perused the records of the Tribunal. In the verification report, it was revealed that Habibur Rahman, S/O Lt. Kalu Sheikh of Gorubandha,

had entered into India after 01.01.1966 and before 24.03.1971. Notice was

issued by the Tribunal to Habibur Rahman, Suran Nessa, Azizul Haque and Amanul Haque. Md. Habibur Rahman had filed WS.

7. We had requested Mr. Payeng to make enquiry regarding the death certificate of Habibur Rahman @ Habibulla Sheikh annexed with the additional affidavit and Mr. Payeng has submitted that he has been informed that the death certificate is genuine.

8. In view of determination that Habibulla Sk., Suran Nessa, Azizul Haque and Amanul Haque were declared to be foreigners within 01.01.1966 to 25.03.1971, it was necessary for them to have their names registered before the concerned Foreigners Regional Registration Officer within 2(two) months. However, the same was not done.

9. Mr. Mondal submits that in the facts and circumstances of the case, unless the petitioners are allowed to register themselves before the appropriate authority, they will suffer irreparable loss and injury. It is further submitted by him that in similarly circumstances, this Court, in WP(C) No.2295/2014

(Pronoti Bala Sarkar & 3 Ors. -vs- State of Assam & 3 Ors.), decided on 11.09.2017, had permitted the petitioners in the said case to approach the

Foreignersâ?? Regional Registration Officer for their registration as foreigners belonging to the 01.01.1966 to 25.03.1971 stream and, accordingly, he

prays for a similar direction in this case. He has further submitted that the petitioner No.2 was taken into custody on 02.06.2018.

10. Mr. Payeng submits that the petitioners may be directed to appear before the Foreigners Tribunal (2nd), Nagaon and to contest the proceeding.

He further submits that it is not certain as to whether the present petitioners before the Court are wife and son of Habibulla Sk. @ Habibur Rahman.

11. In Pronoti Bala Sarkar (supra), it was observed by this court as follows:

As per Section 6A(3) and (4) of the Citizenship Act, 1955, as amended, every person of Indian origin, who came to Assam during the period from

01.01.1966 to 25.03.1971 from the specified territory; has been ordinarily resident in Assam since then; and who has been declared to be a foreigner

of the said stream by competent Foreignersâ?? Tribunal, would have to get himself registered before the competent registering authority and upon

such registration, he would stand disenfranchised for a period of 10 years though he would continue to enjoy other rights and privileges as a citizen of

India. After expiry of the period of 10 years, he would also regain his voting

rights. As per Rule 19 of the Citizenship Rules, 2009, the period of registration is 30 days, which may be extended up-to 60 days and, in exceptional cases, up-to 180 days by the registering authority. In *Moslem Mondal* (supra), the Full Bench has held that if there is failure of a person declared to be a foreigner of the said stream to get himself registered within the prescribed period or within the extended period, he would be liable to face the consequence, including deportation, he being admittedly a foreigner. Of course the periods as prescribed under Rule 19 of the Citizenship Rules, 2009 is applicable to the registering authorities. In an appropriate case, as explained in *Moslem Mondal* (supra), a high Court exercising jurisdiction under Article 226 of the Constitution of India, may permit registration even beyond the period so prescribed. After hearing the learned counsel for the parties and on due consideration, we are of the view that it would meet the ends of justice to permit the petitioners to get themselves registered as foreigners belonging to the 01.01.1966 to 25.03.1971 stream even at this belated stage.

Let the petitioners approach the Foreignersâ?? Regional Registration Officer, Nagaon, within a period of 30 days from today and upon approach being made within the above, period, Foreignersâ?? Regional Registration Officer, Nagaon, shall pass appropriate order of registration. After registering petitioners as foreigners belonging to the said stream, the legal consequences shall follow.â??

12. Having heard the submission of the learned counsel for the parties and taking note of the fact that the categorical stand of the State in the reference was that the petitioners had entered into India in between the period of 01.01.1966 to 25.03.1971, in the attending facts and circumstances of the case, we are of the opinion that it will meet the ends of justice if the petitioners are allowed to get themselves registered as foreigners belonging to the 01.01.19966 to 25.03.1971 stream even at this point of time. Ordered accordingly.

13. The petitioner No.2 shall be released from custody without any delay.

14. The petitioners, namely, Huran Nessa @ Suran Nessa, W/O Lt. Habibulla Sk. @ Habibur Rahman and Ajijul Sk. @ Ajijulla @ Ajijul Hoque, S/O

Lt. Habibulla Sk. @ Habibur Rahman, will approach the Foreignersâ?? Regional Registration Officer, Nagaon, within a period of 30(thirty) days

from today and, upon such approach being made within the above period, the Foreigners Regional Registration Officer, Nagaon, shall pass appropriate order of registration. After registration of the petitioners as foreigners belonging to the 01.01.1966 to 25.03.1971 stream, the legal consequences will follow.

15. If, however, the petitioners do not approach the Foreigners Regional Registration Officer, Nagaon within the aforesaid period of 30(thirty) days, the petitioners will be liable to be deported from India.

16. With the above observations and directions, the writ petition stands disposed of. No cost.

17. The Registry will send back the records.