

(2019) 08 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 3677 Of 2019

Jahura Khatoon

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Evidence Act, 1872 — Section 165
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 GAU CK 0030

Hon'ble Judges : Manojit Bhuyan, J;Kalyan Rai Surana, J

Bench : Division Bench

Advocate : S Bhuyan

Final Decision : Disposed Off

Judgement

1) Heard Mr. A. Das, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned CGC, Mr. A. Kalita, Standing Counsel for respondent No.2 to 6.

2) By this writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the opinion dated 04.01.2019 rendered by the learned Member, Foreigners Tribunal- 4th, Nagaon, in F.T. Case No. 362/2015, arising out of Police Reference D Case No. 840/98, thereby declaring the petitioner to be a foreigner.

3) The very short point urged by the learned counsel for the petitioner is that the learned Tribunal had given its opinion without discussing the materials available on the record. In support of his submissions, it is submitted that the petitioner had examined her father as OPW-2 and the Sarkari Gaonbura as OPW-3, but in the impugned opinion, there is absolutely no reference or discussions thereon.

4) The record of the learned Tribunal, as called for, has been received. Perused the same. It is seen that as per the order-sheet, the evidence- on- affidavit of Md. Abdul Jabbar (OPW-2) was submitted on 06.06.2016, and that of Abdul Hai, the Sarkari Gaonbura (OPW-3) was submitted on 27.09.2016. As per the order-

sheet, the OPW-1 and OPW-2 were examined by the learned Tribunal on 27.09.2016. The record of such examination is available at pages 72 and 73 of the learned Tribunal's record. It is also seen that the OPW-3 was not cross examined by the counsel for the State and the said witness was also not examined by the learned Tribunal. The exhibits are found to be not signed by the learned Tribunal. It is also seen that the learned Tribunal has failed to discuss the evidence of OPW-2 and 3 and it has also failed to discuss anything in respect to the answers given by the OPW1 and OPW-2 to the queries by the learned Tribunal. In the considered opinion of this Court, the power of the learned Tribunal to put queries to the witnesses is relatable to the provisions of Section 165 of the Evidence Act, 1872 which forms an integral part of the evidence on record. On perusal of the order-sheet of the learned Tribunal, it is seen that by an order passed by this Court in W.P.(C) (Suo Motu) No. 1/2018, which was transmitted under Memo No. HC.XXI-1528-1532 dated 22.06.2018, the learned Tribunal had heard the case afresh from the stage of argument. Therefore, while rendering the opinion, the learned Tribunal a duty had been cast upon the learned Tribunal to give the finding on considering the evidence on record, including the queries made by the learned Tribunal to the witnesses. Hence, this Court is of the considered opinion that the non- consideration of the evidence available on record has caused prejudice to the party. If the learned Tribunal was of the view that the evidence on record is not relevant, a finding to that effect ought to have been recorded, which in the present case is missing. Under such circumstances, we are inclined to interfere with the impugned opinion, which is hereby set aside. The learned Tribunal is directed to pass the opinion afresh in light of the observations made hereinabove.

5) The petitioner shall appear before the learned Tribunal on 21.08.2019 without any further notice. Upon appearance, the learned Tribunal shall dispose of the proceeding within a period of 30 days from the date of appearance and/or the date of receipt of the record. Accordingly, this writ petition stands disposed of at the admission stage in terms of the directions contained herein.

6) No cost.