

(2025) 09 GAU CK 0450
In the Gauhati High Court
Case No : WP(C) Of 5109 Of 2025

Mali Ghosh @ Moli Ghosh

APPELLANT

Vs

Union Of India And 5 Ors

RESPONDENT

Date of Decision : 11-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2025) 09 GAU CK 0450

Hon'ble Judges : Kalyan Rai Surana, J; Rajesh Mazumdar, J

Bench : Division Bench

Advocate : S C Biswas, P Halder, F A Hassan

Final Decision : Dismissed

Judgement

Rajesh Mazumdar, J

1. Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Ms. L. Devi, learned counsel appearing on behalf of Mr. R. K. D. Choudhury, Deputy Solicitor General of India, Ms. A. Verma, learned Standing counsel for the FT matters and NRC; Ms. N. Bedi, learned counsel appearing on behalf of Ms. P. Baruah, learned Standing Counsel for the ECI; and Mr. H. K. Hazarika, learned Junior Government Advocate for the State respondent.

2. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner to assail the opinion rendered on 22.10.2019 by the learned Foreigners Tribunal, Tezpur 1st, Sonitpur in F.T. (D) case no. 4810/2012.

3. Records annexed to the writ petition reveal that the F.T. (D) case no. 4810/2012 arising out of S.P.(B) case no. 1367/2006 was disposed of by the Foreigners Tribunal, Tezpur 1st, Sonitpur by an ex-parte order passed on 26.06.2016. The opinion dated 26.06.2016, recorded that the O.P. namely Mali Ghosh wife of Pradip, had received a notice containing the grounds of reference, but had failed to submit the written statement although many adjournments had been availed by the O.P. Therefore, the case proceeded ex-parte culminating in

an opinion that the O.P. was found to be a foreigner who entered Assam illegally during the period from 01.01.1966 and 25.03.1971 from the Specified territory. The O.P. was directed to get her name registered as such within 30 (thirty) days of passing of the order.

4. The O.P. had thereafter preferred Misc Case no. 10/2017, praying before the Tribunal to set aside the ex-parte opinion passed on 26.06.2016. Allowing the aforesaid Misc Case no. 10/2017, the Tribunal, by order dated 12.09.2017, set aside the order which had directed the case to proceed ex-parte and the petitioner herein, who was the proceedee therein, was allowed to contest the case. Records reveal that thereafter, the writ petitioner herein, as the proceedee had filed her written statement, written evidence as well as documentary evidence. Upon consideration of the case put forward by the writ petitioner herein, the Tribunal by opinion dated 14.05.2019, held that the writ petitioner was a foreigner who had entered India on or after 25.03.1971, from a specified territory of Bangladesh without any valid document. Immediately thereafter, the writ petitioner filed an application before the Special Foreigners Registration Officer, Tezpur praying to be registered as a person who entered Assam between 01.01.1966 to 25.03.1971 and accordingly, she was registered vide registration no. TZ/FRRO/19/624 on 06.08.2019.

5. The petitioner thereafter preferred WP(C)/3948/2019 challenging the opinion dated 14.05.2019 passed by the learned Member, Foreigners Tribunal 1st, Sonitpur in connection with F.T. case no. 4810/2012. The aforesaid writ petition bearing WP(C)/3948/2019 was disposed of on 26.08.2019, allowing the writ petition and remanding the proceedings of F.T.(D) No. 4310/2012 for a fresh decision by the learned Tribunal on the basis of the materials available on record. The learned Tribunal was directed to hear the parties afresh and make an endeavour to dispose of the matter within 30 days from the date of receipt of the records. The aforesaid decision had been arrived at in view of the opinion of the Court that the "Exhibit No. 8" before the learned Tribunal did not receive any attention of the Tribunal and the lack of appreciation of evidence available on record was found to have caused prejudice to the petitioner, vitiating the opinion of the learned Tribunal.

6. It is relevant to note here that this Court had also recorded in the order that it appears that the petitioner had concealed before the Special Foreigners Registration Tezpur 1st, Sonitpur, that the ex-parte opinion dated 26.06.2016, had already been set aside by the order dated 12.09.2017 leading to an erroneous registration of the petitioner on 06.08.2019 as the foreigner of the stream of 01.01.1966 to 25.03.1971. This Court had therefore held that the registration was not sustainable and was required to be reconsidered in the light of subsequent opinion rendered by the Tribunal that the petitioner, namely, Mali Ghose was a foreigner who had entered India on or after 25.03.1971, from the specified territory of Bangladesh without any valid document. The petitioner was directed to appear before the learned Foreigners Tribunal Tezpur 1st, Sonitpur,

Assam on 16.09.2019, without fail and without further notice for appearance.

7. The records reveal that the petitioner thereafter did not appear before the learned Tribunal as directed and the learned Tribunal proceeded to decide the matter afresh as per directions of this Court. Having done so, the Tribunal rendered the impugned opinion on 22.10.2019, that the petitioner was a foreigner who entered India on or after 25.03.1971, from the specified territory without any valid documents. The reference was thus answered in the affirmative and in favour of the State. It is this opinion which now faces challenge in the present writ petition.

8. Mr. S. C. Biswas, learned counsel appearing for the writ petitioner namely, Mali Ghosh @ Moli Ghosh has led us through the records annexed to the writ petition and has stated that although the writ petition bearing No. WP(C)/3948/2019 had been allowed by this Court, remanding the matter back to the Tribunal and requiring the petitioner to appear before the Tribunal without further notice, there was a communication gap between the petitioner and her engaged counsel, Mr. H. A. Sarkar, who is stated to be suffering from certain disease for a prolonged period. Mr. Biswas, learned counsel submits that it was under such circumstances, over which the petitioner had no control, that she was not able to appear before the learned Tribunal as directed by this Court, and, therefore, the impugned ex-parte opinion dated 22.10.2019, deserves to be interfered with in the present proceedings by remanding the matter back again in the interest of justice. The learned counsel further submits that it was only when the police came to look for the petitioner during the second week of June, 2025, that her family members came to know about the opinion dated 22.10.2019 rendered against the petitioner, and, therefore, the delay in approaching this Court requires to be condoned and the case of the petitioner deserves to be decided on merits.

9. Ms. A. Verma, learned Standing counsel for the FT matters on the other hand vehemently opposed the writ petition by submitting that the opinion of the learned Tribunal rendered on 22.10.2019, does not suffer from any illegality and no injustice has been caused to the petitioner. She has submitted that initially the petitioner suffered an ex-parte opinion early in the year of 2016 and the said ex-parte order had been set aside by the Tribunal itself on her own prayer. The petitioner had thereafter participated in the proceedings before the Tribunal and the same had culminated in an opinion rendered on 14.05.2019. She further submits that on an interference made by this Court with the said opinion dated 14.05.2019, the petitioner was afforded another opportunity to be heard by the Tribunal, but this time, she did not avail such opportunity. Ms. A. Verma, learned Standing counsel has submitted that the intention of the petitioner to resort to multiple litigation cannot be seen as a bonafide move since she had tried to play fraud at the initial stage by suppressing the opinion dated 14.05.2019, before the Special Foreigners Registration Officer, Sonitpur, Tezpur and now she has again attempted to resort to a fresh proceeding against the opinion rendered on

22.10.2019, by referring to the illness suffered by her counsel. Ms. Verma, learned Standing counsel, FT matters submits that it was the bounden duty of the writ petitioner to keep track of the proceedings of WP(C)/3948/2019, and she cannot feign ignorance of the fate of the writ petition by stating about the illness suffered by her counsel. Ms. Verma, learned Standing counsel has further submitted that the petitioner has not challenged the opinion of the learned Tribunal on merits, and the petitioner has only prayed that the matter be remanded back for retrial with the opportunity to the petitioner to appear and contest the reference against her by filing written statements and adducing additional evidence in support of her claim to citizenship of India.

10. Ms. Verma, learned Standing counsel submits that in the earlier round of litigation before this Court, the learned Tribunal was directed to render a fresh opinion on the basis of materials available on record and the only fault found in the decision making process of the learned Tribunal then was that the Exhibit no. 8 which was a certified copy of the Electoral Roll of 2016 did not receive discussion of the Tribunal. The learned counsel submits that even in the earlier round, the petitioner was not allowed to bring on record any fresh written statement or evidence, and, therefore, the question of allowing such opportunity now does not, as it cannot, arise.

11. We have heard the learned counsel for the parties and we have considered the materials placed on record.

12. The record reveals that in the earlier round of litigation before this Court vide WP(C)/3948/2019, this Court had allowed the writ petition to the extent of remanding the matter back to the Tribunal to render a fresh opinion by giving opportunity of hearing to the parties and by taking into account the materials already available on record. We find force in the submission of the learned Standing counsel for the FT matters, that in the earlier round of litigation there was no liberty granted to the petitioner to either file a fresh written statement or to adduce any further evidence and in fact, such was not the prayer made in WP(C)/3948/2019. The petitioner had been directed to appear before the Tribunal on 16.09.2019 without fail and without further notice for appearance. The petitioner failed to avail the opportunity granted by this Court to be heard afresh.

13. A party pursuing a litigation cannot be heard to say that she did not keep track of the proceeding initiated by her and that she remained oblivious to the outcome of the proceeding initiated at her instance, more so, when the outcome of such proceeding would have over bearing impact on the valuable right of citizenship sought to be ascertained by the litigant. We, therefore, do not find any error when the learned Tribunal proceeded to render the opinion on 22.10.2019, even in the absence of the petitioner.

14. This Court is conscious of the extent of interference that can be exercised under powers conferred by Article 226 of the Constitution of India and we have

not found any procedural lapse in the learned Tribunal proceeding to adjudicate the proceeding against the petitioner. However, keeping in view the fact that the litigation involves determination of citizenship of the writ petitioner, we have perused and applied our minds to the opinion rendered on 22.10.2019, to ensure that the petitioner does not suffer without being heard on all aspects of the matter.

15. Consideration of the opinion in issue reveals that the learned Tribunal had appreciated and considered each of the statements made by the petitioner in her written statements and the written evidence and each of the exhibits also received due consideration from the Tribunal. In fact, the Exhibit No. 8, which earlier did not receive attention of the learned Tribunal was extensively discussed before rendering the opinion dated 22.10.2019. On a pointed query, the learned counsel for the petitioner admitted that the opinion dated 22.10.2019, has not been challenged on the merits of the matter but the same has been assailed since the petitioner could not avail the opportunity to be heard afresh.

16. We have gone through the writ petition, more specifically the prayer portion wherein it has been prayed to remand the case for a retrial with the opportunity to the petitioner to contest the reference by filing a written statement and adducing additional evidence in support of her Indian citizenship. We notice that the petitioner had already filed her written statement before the Tribunal and in the earlier round of litigation before this Court, the petitioner was not afforded the liberty to adduce additional evidence. The said order passed in the earlier round of litigation having attained its finality, we are of the considered opinion that the present prayers made by the writ petitioner cannot be granted.

17. Resultantly, the present writ petition fails and is accordingly dismissed. Consequences of such dismissal shall follow.

18. A copy of this order be transmitted to the concerned tribunal, to be kept as part of the record of FT case no. 4810/2012.

19. Parties are left to bear their own cost.