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**(2015) 10 GAU CK 0006**  
**In the Gauhati High Court**  
**Case No : WP (C) No. 5138 of 2014**

Michiri Khatun

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision :** 06-10-2015

**Acts Referred:**

Citizenship Act, 1955 — Section 6A, 6-A  
Constitution of India, 1950 — Article 355

**Citation :** (2016) 1 GLT 693

**Hon'ble Judges :** Biplab Kumar Sharma, J.

**Bench :** Single Bench

**Advocate :** M. Ahmed. Advocate, for the Appellant; G. Sarma, Noor Mohammad, G.A., and D. Baruah, SC, EC, for the Respondent

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## Judgement

Biplab Kumar Sharma, J.—In terms of the earlier orders passed, the Government of Assam in the Home and Political Department has filed an affidavit through its Joint Secretary, Political Department.

2. The petitioner was declared to be a foreigner way back in 1995 (20/02/1995) by the Foreigners Tribunal, Barpeta in FT Case No. 21/93(B) (State Vs. Michiran @ Michiran Nessa). She was declared to be a foreigner within the stream of 01-01-1966 to 25-03-1971 requiring her name to be registered with consequential deletion of her name from the voter list.

3. The writ petition was filed on 22/09/2014 after a delay of 19 (nineteen) years. Taking up the writ petition for consideration, the State respondents were directed to apprise the Court as to what action it had initiated pursuant to the impugned declaration made by the Foreigners Tribunal. It was noticed that inspite of the said declaration, the name of the petitioner was incorporated in the voter list of 1997 violating the provisions of the Citizenship Act. It was also recorded in the order that because of such approach on the part of the State Government, the concerned officers are liable for appropriate action.

4. In the affidavit filed by the Government of Assam through the Joint Secretary, Political Department, while highlighting the purported action plan towards apprehending the declared foreigners and deletion of their names from the voter list, it has been stated that in the instant case, the name of the petitioner was deleted from the electoral rolls during the summary revision of 2014. It has also been stated that the letter dated 06/04/1995 of the Special FRRO, Barpeta addressed to the Deputy Commissioner, Barpeta for deletion of the name of the petitioner is not traceable in the office. The affidavit further states that the responsibility of deletion of the names of the foreigners from the electoral rolls is on the Electoral Registration Officer and the Deputy Commissioner of the District. It has further been stated that the Chief Electoral Officer, Assam and the District Election Officer have been asked by the State Government to enquire into the matter as to why immediately after the declaration made in 1995, name of the petitioner was not deleted.

5. From the above narration of fact, what has emerged is that although the petitioner was declared to be a foreigner within the stream of 01/01/1966 to 25/03/1971 requiring deletion of her name from the electoral rolls, but her name continued till 2014, making a mockery of the declaration made by the Foreigners Tribunal and also the provisions of the Citizenship Act.

6. As has been held by the Apex Court in *Sarbananda Sonowal Vs. Union of India* (UOI) and *Another*, there is no manner of doubt that the State of Assam is facing "external aggression and internal disturbance" on account of large scale migration of Bangladeshi Nationals. It, therefore, deemed that the authority to take all measures for protection of the State of Assam from such external aggression and internal disturbances as enjoined in Article 355 of the Constitution of India.

7. Once a proceedee is declared to be a foreigner within the stream of 01/01/1966 to 25/03/1971, it is incumbent on the part of the authority to delete his/her name from the electoral roll. It is also incumbent on the part of the proceedee to register his/her name with the Registering Authority. However, in the instant case, there is absolute and total failure on the part of the State Government to initiate any action against the proceedee i.e. the petitioner, rather her name continued to appear in the electoral rolls till 2014, when this writ petition was entertained. It is only because of the intervention of this Court, her name came to be deleted from the electoral roll. This speaks volume of deliberate inaction on the part of the State Government and its officials, which require immediate intervention of the Central Government to protect the interest of the indigenous people of Assam. In the affidavit, referring to the above, the State Government has contended that the Chief Electoral Officer, Assam and the District Election Officer have been asked to enquire into the matter and appropriate action should be taken against the erring officials.

8. Coming to the case of the petitioner, who was declared to be a foreigner within the stream of 01/01/1966 to 25/03/1971 vide the impugned order dated

20/02/1995 passed in FT Case No. 21/93(B) by the Foreigners Tribunal, Barpeta, there is no question of interference with the same after 19 years of passing the impugned judgment. The explanation furnished regarding the delay in filing the writ petition is in paragraph 8 of the writ petition, which is quoted below:-

"8. That there is sufficient amount of delay in approaching this Hon"ble Court to challenge the Judgment dated 20-02-1995 that is more 19 years. However, such delay was not intentional nor there was a any laches on the part of the petitioner. It is stated that after passing of the Judgment petitioner and her husband was informed by their engaged Advocate that the Judgment was in their favour. It was only in June, 2013 petitioner came to know that she was directed by Tribunal to get her name registered in the office of Foreign Registration Office, Barpeta. Thereafter, although she took some steps to approach this Hon"ble Court by collecting the certified copies of the relevant documents but it took another year to come this Hon"ble Court due to her financial constraints. As such the delay may be condoned for the reasons aforesaid in the interest of justice."

9. The aforesaid plea of the petitioner is mentioned only to be rejected. If such pleas are entertained in the matter of declaration made against a proceeded, there will be no end to such litigation. The Foreigners Tribunal, Barpeta in its impugned order dated 20/02/1995 has elaborately discussed the facts and the evidence. It was noted that the petitioner failed to adduce any evidence to prove that she is an Indian citizen. This Court exercising writ jurisdiction, cannot sit on appeal over the findings recorded by the Tribunal like an appellate Court.

10. This now leads us to the next question as to whether the petitioner is entitled even at this stage to get her name registered with the Registering Authority. In *The State of Assam and Others Vs. Moslem Mondal and Others*, , the Full Bench of this Court dealing with the question of registering the names of the foreigners of the stream of 01/01/1966 to 25/03/1971, held thus:-

"11. 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 the 1955 Act has been enacted, it also cannot be said that the fixation of 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. 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... .."

Following the aforesaid decision, the Citizenship Rules of 2009 has been amended in 2013 laying down the following:-

"[(2) An application for registration under sub-section(3) of Section 6A shall be made in Form XVIII, by the person to the registering authority for the district in which he is ordinarily resident, within a period of thirty days from the date of receipt of order of the Foreigners tribunal declaring such person as a foreigner:

Provided that the registering authority, may, for reasons to be recorded in writing, extend the said period to such further period as may be justified in each case but not exceeding sixty days]

[2-A) A person who has been declared as a foreigner by the Foreigners Tribunal prior to 16th July, 2013 and has not been registered under sub-section(3) of Section 6-A for the reason for non-receipt of order of the Foreigners Tribunal or refusal by the registering authority to register such person as a foreigner on account of delay may, within a period of thirty days from the date of receipt of the order passed by the Foreigners Tribunal, or, from the date of publication of this notification, make an application for registration in Form XVIII to the registering authority of the district in which such person is ordinarily a resident;

Provided that the registering authority may, for reasons to be recorded in writing extend the said period to such further period as may be justified in each case but not exceeding one hundred eighty days.]"

11. The petitioner having failed to register her name within the stipulated period time and her case being not within the exemptions and time limit provided under 2A above, she is not entitled to get her name registered and consequently she is a foreigner making her liable to be deported from India.

12. For all the aforesaid reasons, the writ petition is dismissed. The petitioner shall be deemed to be a declared foreigner and shall be taken into custody for keeping her in detention camp till such time she is deported to her country of origin i.e. Bangladesh.

13. Let the matter be listed again after one month so as to submit report by the Superintendent of Police (B) Barpeta about the action taken in the terms of this order.

14. Registry shall send down the case records to the learned court below along with a copy of this judgment and order. A copy of the judgment and order may also be furnished to Mr. Noor Mohammad, learned State Counsel as well as Ms. G. Sarma, learned counsel representing the UOI, for their immediate necessary follow up action. Copies shall also be sent to the SP(B), Barpeta and Deputy Commissioner, Barpeta, for their immediate follow up action.