
(2018) 04 GAU CK 0054
In the Gauhati High Court
Case No : WP(C) 5713 of 2016

MORIOM BIBI

APPELLANT

Vs

THE UNION OF INDIA and 3 ORS

RESPONDENT

Date of Decision : 20-04-2018

Acts Referred:

Citizenship Act, 1955 — Section 6A, 6A(3), (4)
Constitution of India, 1950 — Article 226

Citation : (2018) 04 GAU CK 0054

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan, J.Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â Â

Heard Mr. PC Dey, learned counsel for the petitioner and Mr. A Kalita, learned Special Counsel, Foreignersâ?? Tribunal (FT). By filing this petition

under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 04.08.2016 passed by the Foreignersâ?? Tribunal 7th , Dhubri

at Bilasipara (Tribunal) in FT 7th Dhubri Case No.19/BBR/16 (State â?"vs- Moriom Bibi) declaring the petitioner to be a foreigner who had illegal

entered into India (Assam) from Bangladesh after 25.03.1971. This Court by order dated 04.10.2016 had issued notice while requisitioning the case

record and passed an interim order to the effect that petitioner should be allowed to remain on bail subject to her appearance before the

Superintendent of Police (Border), Dhubri and furnishing of adequate surety.

Mr. PC Dey, learned counsel for the petitioner submits that in the reference made by the Superintendent of Police, Dhubri, petitioner was suspected to

be a foreigner belonging to the 1966-1971 stream. But in the notice issued by

the Tribunal to the petitioner, inapplicable portion in the notice i.e. after 25.03.1971 was not struck off and in the ultimate analysis, Tribunal passed the impugned order declaring the petitioner to be a foreigner of post 25.03.1971 stream contrary to the reference made. Relying on a decision of this Court in the case of *Paran Uddin @ Paran Ali* vs- Union of India reported in 2017 (5) GLT 831, he submits that the impugned order passed by the Tribunal would be unsustainable in law and is liable to be set aside.

On the other hand, Mr. A Kalita, learned Special Counsel, Foreignersâ?? Tribunal (FT) generally agreeing with the submissions made by learned counsel for the petitioner, however points out that in the enquiry report, Enquiry Officer had recorded that the suspect could not produce any document relating to her citizenship. If that was the position, on what basis the Enquiry Officer or for that matter, the referral authority took the view that the petitioner was a foreigner belonging to the 1966-1971 stream, is beyond comprehension. If the suspect could not produce any document relating to her citizenship, then in the context of Section 6 A of the Citizenship Act, 1955, as amended, he/she would be a foreigner of post 25.03.1971 stream. However, he submits that the course of action directed by this Court in *Paran Uddin @ Paran Ali* (supra) may be adopted in this case as well.

Submissions made by the learned counsel for the parties have been considered. Also perused the materials on record, including the record requisitioned from the Tribunal.

We find that one Sirajul Hoque, Deputy Sub-Inspector of Police, Dhubri has filed an affidavit on behalf of respondent No.3 i.e. Superintendent of Police (Border), Dhubri wherein he stated that during village survey of village-Sadhubhasa Part II, under Bagribari P.S., Sub-Inspector of Police i.e. the Enquiry Officer Dibakar Roy received information that petitioner was a suspected foreign national. Enquiry Officer visited the place of residence of the petitioner and asked her to produce valid documents to prove her Indian nationality but she failed to do so whereafter formal enquiry was conducted. In the course of this enquiry too, petitioner could not produce any valid document to show that she was a citizen of India following which Enquiry Officer submitted his report whereafter Superintendent of Police (Border), Dhubri made the reference suspecting the petitioner to be a foreigner of 1966-1971 stream.

Section 6 A (3) and (4) of the Citizenship Act, 1955 provides for two categories of foreigners in respect of the State of Assam. The first category of foreigners belong to the 01.01.1966 to 24.03.1971 stream and the second category of foreigners belong to the post 25.03.1971 stream. A person who is declared to be a foreigner belonging to the first category upon registration would be disenfranchised for 10 years though he would continue to enjoy all the rights and privileges as a citizen of India. After the period of 10 years is over, he even regains back his voting rights. On the other hand, foreigners of post 25.03.1971 stream are liable to be expelled from the country. Therefore, for all intent and purpose, a person who is declared to be a foreigner belonging to the 01.01.1966 to 24.03.1971 stream is a citizen of India. In such circumstances, any reference made by the referral authority suspecting a person to be a foreigner belonging to the aforesaid category i.e., 1966 to 1971 would have to be scrutinized very carefully because it is virtually a declaration of citizenship.

Reverting back to the facts of the present case, we find that as per report of the Enquiry Officer, petitioner could not produce any valid document in support of her Indian nationality. However, the Superintendent of Police (Border), Dhubri made the reference suspecting the petitioner to be a foreigner belonging to the 1966-1971 stream. In the context of Section-6 A of the Citizenship Act, 1955, as amended, when a suspect fails to produce any document in support of his/her Indian nationality, question of suspecting him/her to be a foreigner belonging to the 1966-1971 stream cannot and does not arise. He/she has to be suspected to be a foreigner of post 25.03.1971 stream.

This aspect of the matter was gone into by this Court in the case of Fulani Bibi â"vs-Union of India, WP (C) No.7104 of 2015, decided on 18.08.2017 where this Court had observed that such a reference would be a faulty and being a faulty reference, contrary to the materials on record, Tribunal should sent back the reference to the referral authority pointing out the error or fault in the reference. Once such reference is returned back to the referral authority, it would be the duty of the referral authority to make a fresh reference to the Tribunal after removing the defect or error as pointed out by the Tribunal. In Paran Uddin @ Paran Ali (supra), faced with a similar situation, this Court had set aside the order of the Tribunal and

had remanded the matter back to the Superintendent of Police (Border), Dhubri for making a fresh reference.

That being the position, without entering into the merit of the findings returned by the Tribunal, we set aside the order dated 04.08.2016 and remand

the matter back to the Superintendent of Police (Border), Dhubri to make a fresh reference to the Tribunal having regard to the discussions and

observations made above. Petitioner shall appear before the Superintendent of Police (Border), Dhubri on 15.05.2018 at 10.30 am whereafter

Superintendent of Police (Border), Dhubri shall make the fresh reference in accordance with law.

Before parting with the record, we are constrained to observe that all the erroneous or faulty references which have been noticed by the Court are

from Dhubri district made by the Superintendent of Police (Border), Dhubri. This aspect of the matter should be looked into by the Special Director

General of Police (Border), Assam to ensure that such mistakes are eliminated. Registry to send down the LCR and inform the concerned

Foreignersâ?? Tribunal, Deputy Commissioner and the Superintendent of Police (Border) for doing the needful. A copy of this order may be

furnished to learned Standing Counsel, Election Commission of India and the State Coordinator, NRC. Registrar (Judicial) , Gauhati High Court shall

forward a copy of this order to the Special Director General of Police (Border), Assam for doing the needful. Writ petition stands disposed of.