
(2021) 08 GAU CK 0075

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4016 Of 2021

Nazira Khatun

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 20-08-2021

Acts Referred:

Citation : (2021) 08 GAU CK 0075

Hon'ble Judges : N. Kotiswar Singh, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : A S Tapader

Final Decision : Disposed Of

Judgement

1. Heard Ms. C. M. Deka, learned counsel assisted by Mr. A. S. Tapader, learned counsel appearing for the petitioner. Also heard Ms. L. Devi,

learned Standing Counsel appearing on behalf of Mr. R. K. Debchoudhury for respondent No.1 whereas Mr. G. Sarma, learned Special Counsel, FT

appears for respondent Nos.2, 3, 6, and 7. Ms. B. Das, learned Standing Counsel appears for respondent no. 4 and Ms. L. Devi, learned Standing

Counsel, appears for respondent no.5.

2. The present petition has been filed challenging the ex-parte order dated 11.11.2011 passed in Foreignersâ?? Tribunal Case No. 404/2008 by the

Foreignersâ?? Tribunal No.1, Barpeta by which the petitioner was proceed ex-parte and was declared a foreigner of post 1971 stream on the ground

that though the Opposite Party/petitioner was duly served notice, the Opposite Party/petitioner did not appear before the Tribunal. Accordingly, the

matter was proceeded ex-parte by the Foreignersâ?? Tribunal by rendering the opinion that the Opposite Party/petitioner, Musstt. Nazira Khatun,

wife of- Md. Jakir Hussain, resident of village-Chaurachara, P.S-Baghbar, Dist-Barpeta, Assam is a foreigner, who came to India after 25.03.1971.

The learned counsel for the petitioner submits that since the petitioner was not served with the summons, she was not aware of the proceedings

before the Foreignersâ?? Tribunal. However, subsequently in the month of October, 2020, a police team came to visit the residence of the petitioner

with a direction to the petitioner to report to the local police station immediately, when she learnt that the police were looking for her as she was

ostensibly considered a foreigner.

3. Learned counsel for the petitioner submits that being apprehensive, the petitioner made an enquiry before the Foreignersâ?? Tribunal and found

that the ex-parte order was already passed on 11.11.2011 by declaring her as foreigner. On further enquiry from the records of the Foreignersâ??

Tribunal, it was found that summons was alleged to have been received by one Jakir Hussain by putting a thumb impression without indicating as to

who that Jakir Hussain was though according to the petitioner the name of the husband of the petitioner is also Jakir Hussain. However, there was no

such mention in the copy of the summons returned by the Process Server.

4. We have also perused the order dated 11.11.2011 and the statements of some witnesses adduced by the State and found that there are some

inconsistencies in their deposition regarding the identity of the petitioner. Unfortunately, the Process Server was not examined and as such there is

some doubt as to whether the petitioner was really served notice. The report of the Process Server also does not clearly indicate that the said Jakir

Hussain, who allegedly received notice was the husband of the petitioner.

5. The learned counsel for the petitioner submits that otherwise the petitioner has sufficient materials in her support to prove that she is an Indian. In

that regard learned counsel for the petitioner has drawn attention of the Court to the Voters List from 1966 to 2019, in which the name of the father is

shown, which would clearly support her claim that she is an Indian and also to subsequent Voters Lists where the name of the petitioner and father

are also shown.

6. Citizenship, being an important right of a person, we are of the view, ordinarily, should be decided on the basis of merit by considering the material

evidences that may be adduced by the person concerned. In the present case,

we are of the opinion that there are sufficient reasons for the petitioner for not being able to appear before the Foreignersâ?? Tribunal to enable the Tribunal to consider her claim on merit

7. Having heard the learned counsels for the parties and upon perusal of the case records, we are of the view that the petitioner may be afforded

another opportunity to appear before the Tribunal.

8. Accordingly, the impugned ex-parte order dated 11.11.2011 passed in Foreignersâ?? Tribunal Case No. 404/2008 by the Foreignersâ?? Tribunal

No.1, Barpeta is set aside.

9. The petitioner will appear before the Foreignersâ?? Tribunal on or before 21.09.2021 and is at liberty to file written statement and necessary

documents and adduce evidences before the Tribunal to prove her case that she is an Indian.

10. However, since the citizenship of the petitioner is under the cloud, the petitioner will remain on bail subject to the condition that the petitioner shall

appear before the Superintendent of Police (B), Barpeta, within 15 (fifteen) days from today and furnish a bail bond of Rs.5,000/- (Rupees five

thousand) only with one local surety of the like amount to the satisfaction of the said authority, in connection with the aforesaid Foreignersâ??

Tribunal Case No. 404/2008. A direction is also made to the Superintendent of Police (Border), Barpeta that as and when the petitioner appears within

the period indicated above, the biometrics of the iris of both eyes, the fingerprints of both hands and photograph of the petitioner shall be obtained.

11. With the above observations and directions, the present petition is disposed of.