
(2018) 03 GAU CK 0136
In the Gauhati High Court
Case No : WP(C) 5655 of 2017

PROTIMA PRODhani @ ASHMA BIBI @ ASMA KHATUN APPELLANT
Vs
UNION OF INDIA and 5 ORS. RESPONDENT

Date of Decision : 16-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 GAU CK 0136

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Heard Mr. AW Aman, learned counsel for the petitioner and Mr. UK Nair, learned Senior Special Counsel, FT.

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 15.6.2017 passed by the Foreignersâ??

Tribunal No.8, Dhubri in FT Case No.8/32/GKJ/2017 (State â??vs- Ashma Bibi) declaring her to be a foreigner who had illegally entered into India

(Assam) from Bangladesh after 25.3.1971.

A perusal of the order dated 15.6.2017 would go to show that notice issued by the Tribunal was served upon the petitioner but she remained absent on

several occasions compelling the Tribunal to proceed exparte whereafter the order dated 15.6.2017 was passed answering the reference in favour of

the State in the above manner.

In the writ petition, petitioner has stated that notice issued by the Tribunal was not served upon her and therefore she was not aware of the

proceeding.

To appreciate this contention, we had called for the records.

In the meanwhile, there appears to be a change of counsel on behalf of the petitioner whereafter an additional affidavit was filed on 20.11.2017. In the

said additional affidavit, petitioner has admitted that notice was served upon her but she could not regularly appear before the Tribunal because her

husband is an amputee in both his legs for which he has to travel to Amingaon at Guwahati for fixing his artificial limbs. Petitioner has to look after her

husband and has to accompany him to Amingaon, Guwahati. It is for this reason that there was default on the part of the petitioner.

Mr. Nair submits that having regard to the facts and circumstances of the case, Court may consider passing appropriate order.

After hearing learned counsel for the parties and on due consideration, we are of the view that it would be in the interest of justice if petitioner is

granted another opportunity to file written statement and to contest the reference on merit.

Consequently, we set aside the order dated 15.6.2017 and direct the petitioner to appear before the Foreignersâ?? Tribunal No.8, Dhubri in

connection FT Case No.8/32/GKJ/2017 along with her written statement on 11.4.2018 at 10.30 am whereafter Tribunal shall proceed with the

reference in accordance with law and conclude the same within a period of 60 days from the date of appearance.

Needless to say, if there is any default on the part of the petitioner henceforth, Tribunal would be at liberty to pass such order as may be deemed fit

and proper.

Before parting with the record, we make it clear that we have not expressed any opinion on the merit of the case.

Writ petition stands disposed of.

Registry to inform the concerned Foreigners Tribunal, Deputy Commissioner and 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 State Coordinator, NRC.