
(2019) 01 GAU CK 0057
In the Gauhati High Court
Case No : Writ Petition (C) No. 243 Of 2019

Santi Bala Ghose

APPELLANT

Vs

Union Of India And 7 Ors

RESPONDENT

Date of Decision : 28-01-2019

Acts Referred:

Citation : (2019) 01 GAU CK 0057

Hon'ble Judges : Achintya Malla Bujor Barua, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : MU Mahmud

Final Decision : Disposed Off

Judgement

AM Bujor Barua, J

1. Heard Mr. MU Mahmud, learned counsel for the petitioner. Also heard Mr. AI Ali, learned counsel for the Election Commission of India and Mr. J Payeng, learned counsel for the State of Assam appearing for the Foreigners Tribunal and Border Areas, Ms. A Verma, learned standing counsel for the authorities under the NRC as well as Ms. G Sarma, learned counsel for the authorities under the Union of India.

2. The petitioner on being referred by the Superintendent of Police (Border) of Kokrajhar was subjected to a reference bearing Case No. K/FT/D/192/06 as well as K/FT/148/06. The reference was given a final consideration by the order dated 29.11.2016 which is stated to be an ex-parte order.

3. In the order of 29.11.2016, in the 3rd paragraph, it is recorded that since the date of the petitioner's appearance with documents and arguments before the Tribunal, she was granted a further 60 days' time for filing and submission of documents and arguments. We are unable to understand the said recording of the Tribunal. If the petitioner had already appeared along with the documents and arguments, it is to be understood that such documents and arguments

would be available in the record. But if it is so, there is no indication in the order of 29.11.2016 as regards the consideration of such documents. It is also the claim of the petitioner that her son, namely, Anil Ghose was declared to an Indian citizen as per the order dated 02.03.2016 in Case No.K/FT/D/ 1148/2006 ((KEL 32/97/73) by the Foreigners' Tribunal, Kokrajhar.

4. As regards the first aspect, we are of the view that if any document and argument is presented by the petitioner and that had not been taken into consideration by the Tribunal while passing the order dated 29.11.2016, the same itself vitiates the order. Accordingly, the order dated 29.11.2016 is set aside for a re-consideration by the Tribunal strictly within the materials and evidences that have already been led by the petitioner. Further, if it is the claim of the petitioner that her son Anil Ghose had been declared to be a person who had entered India between 01.01.1977 and 25.03.1971, it is for the Tribunal to also examine such order which had been passed in favour of the son of the petitioner. For the purpose, Tribunal shall call for the records of Case No.K/FT/D/ 1148/2006 ((KEL 32/97/73) from the Foreigners' Tribunal, Kokrajhar and examine the same whether the records of the said case indicates that the proceedee therein, namely, Anil Ghose is the son of the present petitioner. If that is found, depending on the conclusion, the Tribunal may pass an appropriate order . However, it is clarified that upon re-consideration, the Tribunal shall confine itself with the materials and evidences that the petitioner had already led without allowing her to adduce further evidences and secondly, the determination as to whether Anil Ghose is the son of the petitioner be confined strictly to the materials and evidences on record in the reference case pertaining to Anil Ghose,

5. The petitioner shall appear before the Foreigners Tribunal, Kokrajhar on 18.03.2019 and within 15 days' there from, the Tribunal shall pass a reasoned order.

6. Writ petition stands disposed of to the extent indicated hereinabove.