

(2018) 03 GAU CK 0067
In the Gauhati High Court
Case No : WP(C) 5406 of 2016

SHWARIFA KHATUN @ SHARIFA BIBI

APPELLANT

Vs

UNION OF INDIA and 6 ORS

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 03 GAU CK 0067

Hon'ble Judges : UJJAL BHUYAN, NELSON SAILO

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Ujjal Bhuyan, J

Heard Mr. MU Mandal, 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 29.03.2016 passed by the Foreignersâ??

Tribunal 6th Dhubri at Bilasipara in FT Case No.6th Dhubri 84/2015 (State vs-Sarifa Bibi) declaring the petitioner to be a foreigner who had illegally

entered into India (Assam) from Bangladesh on or after 25.03.1971.

This Court by order dated 08.09.2016 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 (B), Dhubri and furnishing of adequate surety.

Learned counsel for the petitioner submits that in the Interrogation Report of the Enquiry Officer dated 30.11.2007, he had stated that during enquiry it

was found that the suspected person i.e. the petitioner was not a foreigner but a

citizen of India by birth. The said report was accepted by the Superintendent of Police (B), Dhubri yet the reference was made. Tribunal without examining this aspect of the matter, declared the petitioner to be a foreigner. Therefore, impugned order passed by the Tribunal dated 29.03.2016 should be set aside.

Mr. Nair, learned Senior Special Counsel while agreeing with the submission made by Mr. Mandal, however has pointed out to Clause-12 of the

Interrogation Report and submits that Enquiry officer recorded his satisfaction that petitioner was not suspected to be a foreigner because she had

produced a certificate of National Register of Citizens (NRC), 1951 in which her grandfather Late Nasir Ali Sheikh was included. He submits that

extract of NRC, 1951 is not admissible evidence and therefore the very foundation of the report is erroneous. Tribunal ought to have referred the

matter back to the referral authority i.e. the Superintendent of Police (B), Dhubri for making of fresh and correct reference.

Submissions made by learned counsel for the parties have been considered. Also perused the record, including order dated 29.03.2016.

Record discloses that in his Interrogation Report dated 30.11.2007, the Enquiry Officer reported that the suspected person was found to be not a

foreigner and that she was an Indian by birth. This report was accepted by the Superintendent of Police (B), Dhubri who suggested that the case may

perhaps be dropped but instead it was forwarded to the Foreignersâ?? Tribunal, Dhubri.

Tribunal had issued notice to the petitioner without examining this aspect of the matter. In fact in the notice issued to the petitioner, it was alleged that

she had entered into India prior to 31.12.1965. After the petitioner filed written statement and adduced evidence, Tribunal passed the order dated

29.03.2016 answering the reference in the above manner. While the Tribunal held that the reference was answered in the affirmativeâ?, the

question is that *stricto sensu* there was no reference at all since the referral authority had taken the view that the suspect (petitioner) was not a

foreigner. This therefore indicates non-application of mind at the level of the referral authority as well as that of the Tribunal.

This Court has already held in a number of decisions that a Foreignersâ?? Tribunal cannot traverse beyond the terms of the reference because a

Tribunal gets the jurisdiction to render an opinion only upon a reference made to it, with the caveat that in case Tribunal finds a reference to be faulty,

Tribunal should return back the reference to the referral authority pointing out the fault and for making of a correct reference. But that was not the

procedure followed in the present case. In that view of the matter, without entering into the merits of the impugned order dated 29.03.2016, we set

aside the same for the grounds and reasons mentioned above.

At this stage, Mr. UK Nair, learned Senior Special Counsel submits that liberty may be granted to the State to carry out fresh investigation into the

citizenship status of the petitioner as the interrogation report of the Enquiry Officer was based on a completely erroneous understanding of NRC,

1951, which has been judicially held to be not a valid piece of evidence to prove citizenship. It is open to the State to do the needful in terms of the

applicable legal provisions but we express no opinion in this regard.

Writ petition is accordingly disposed of.

Registry to 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 the learned Standing Counsel, Election Commission of India and the State Coordinator, NRC.